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THE NATIONAL GOVERNMENT AS A HOLDING CORPORATION: THE QUESTION OF SUBSIDIARY BUDGETS

NO phenomenon in the field of American politics is of greater significance than the increasing scope, magnitude and complexity of the tasks that are being imposed upon our national government. It is hardly necessary to state that this great increase in both the volume and the variety of the duties of that government correspondingly complicates and renders more difficult the securing of an efficient administration of public affairs. This increase in the burden thrown upon the machinery of government manifests itself in all branches of the government, but particularly in the administrative and the legislative. For years past the task of organizing and correlating the several services of the national government so as to avoid overlapping of jurisdictions and duplication of plant, organization and work, and to insure that all will work as one harmonious piece of administrative mechanism, has been one of the most serious problems confronting the government. One needs but a slight acquaintance with conditions at Washington to know that this problem has been by no means solved and that conditions in this respect are far from satisfactory. Every new activity undertaken and every new service established adds to the complexity of this problem. Steadily the administrative branch of the government is becoming more unwieldy, more complicated and more difficult to operate as one piece of integrated machinery.

In the legislative branch the effect of this increase in the volume and variety of work to be performed is, if possible, even

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more evident. In the administrative branch additional work can be provided for by the extension of existing, and the creation of additional, services. In the legislative branch this cannot be done; at least nothing in this way has actually been done. The situation is thus presented where Congress is called upon to consider and legislate regarding a constantly increasing variety of matters. These matters, moreover, no longer relate merely to questions of general political policy. For the most part they have to do with highly specialized subjects. The task confronting Congress is thus one, not merely of determining the general policy of the government in respect to the performance of its essential functions, but of having to make decisions regarding matters which in their variety and scope embrace almost all fields of human activity. Furthermore, after the first decisions are made, Congress is subsequently under the necessity, annually, of considering what provision shall be made in the way of plant, organization, personnel and financial grants for the support and conduct of the machinery that has to be set up for the enforcement and execution of the policies decided upon.

There can be no question that Congress is staggering under this load. Notwithstanding the fact that during recent years it has been in almost continuous session, and that the rules and practices of both houses have been progressively modified with a view to securing increased dispatch in the conduct of its affairs, it is utterly unable to handle with due care and promptness even those urgent matters regarding which there is substantial agreement that action of some sort should be had. Finally, that this situation will grow worse rather than better is as certain as anything can be.

The foregoing represents a condition of affairs that must give concern to all persons interested in the cause of efficient government. It raises squarely the question as to what shall be done to meet the problem of administration engendered by it. Matters cannot be allowed to drift indefinitely, since, as has been pointed out, the situation tends constantly to become one of increasing gravity. Some positive action of a radical character is required. It is the purpose of this paper to bring for

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ward for consideration one form of action which, in the opinion of its writer, will meet the problems here presented.

This action consists in the definite adoption by the government, in making provision for the performance of both its legislative and its administrative functions, of the principle, or device, of what is known as the holding and subsidiary corporations form of organization. It contemplates that Congress shall look upon the general government as but a holding corporation of which it is the board of directors; that, as such, it shall not seek itself directly to manage all of the affairs of government, but shall bring into existence distinct subsidiary corporations to direct and administer the affairs of certain of its special services. Essentially this means that each such service will be given a legal, administrative and financial autonomy. Each will have its organic act, or charter, providing for its creation and defining its jurisdiction, powers and duties; its board of directors; its directing staff and subordinate personnel; its own plant, equipment and other property which it will possess in its own name; its own revenue and expenditure system; its distinct accounting and reporting system separate from that of the general government; and its own well-defined sphere of activities. Each, in a word, will have all the characteristics of a public corporation.

The legal relationship between these service corporations and the general government will be precisely that of municipal corporations to the commonwealth creating them. In their practical operations, however, the status of principal and agent as between the general government and the incorporated service will be far more strongly emphasized. The general government, as principal, will concern itself with the operations of its agent in a way that no state does with the operations of its municipal corporations. It will require from its agent the most detailed and complete information regarding its operations. It will, of course, have the formal approval annually of its work program and budget of revenues and expenditures. It will stand back of the subsidiary corporation financially in that it will profit by any surplus earnings and be responsible for any deficit resulting from its operations. It will, in a word, occupy, as regards current direction, supervision and control,

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and direct financial interest in its physical and financial operations, precisely the position of the private holding corporation towards its subsidiary corporations.

This proposal does not by any means contemplate that all of the administrative services of the government will be given such a status. The idea is that only certain ones will be so treated. A study of the several services of the government shows that the argument in favor of erecting them into distinct corporations is much stronger in certain cases than in others. In the former category, first for treatment in this way are those having an industrial and revenue-producing character. Of such the government already possesses a considerable number: the Postal Service; the Panama Canal; the Alaskan Engineering Commission, to which is entrusted the construction and operation of a system of railways in Alaska; the Bureau of War Risk Insurance; and the Shipping Board. Each of these represents a distinct activity which has little or no direct relation to the general operations of government. Each has all the characteristics of an ordinary industrial or commercial enterprise as carried on under private auspices. Each has its special plant, equipment and personnel, and each has, or should have, its distinct budget of revenues and expenditures, and accounting and reporting systems. Each, finally, in its operations, presents problems of organization and administration which are of a purely non-political and technical character. This list, moreover, is one to which material additions may be made in the future. There is a demand, which is probably steadily growing in strength, that the national government take over the ownership and operation of such public utilities as means of radio communication, telegraph and telephones, and the railway system of the country.

Second in order of consideration for their possible erection into subsidiary corporations are certain services having for their purpose the administration or exploitation of the public domain: the General Land Office; the Reclamation Service; the Forest Service; the National Parks Service. Next in order would come the great general supply services and manufacturing plants of the government: the Government Printing Office; the Bureau of

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Printing and Engraving; the Office of Supervising Architect of the Treasury; the General Supply Committee; the proposed Nitrate Plant and possibly the Arsenals and Navy Yards. Among other services, the erection of which into subsidiary corporations should receive special consideration, particular mention should be made of the Bureau of Indian Affairs and the Patent Office.

Having stated the proposition, it remains for us to consider the advantages which it is believed will flow from its adoption, and to meet certain objections which it is to be anticipated will be urged against it. In seeking to do this, the consequence resulting from putting this policy into effect should be considered from the two standpoints of the holding corporation, that is, the general government, and the subsidiary corporation, or the service given this special treatment.

From the first standpoint, the most important result would be the immediate relief of Congress from the burden of having to concern itself with the great mass of details, many of which are of a purely administrative and technical character, under which it now labors in seeking itself directly to determine precisely how each of these highly specialized services shall be organized, manned, equipped and operated. This relief will manifest itself especially in respect to the annually recurring necessity that Congress is now under of considering in detail the appropriations that shall be voted for the support of the government. It goes without saying that under existing conditions, with the great and constantly increasing magnitude and variety of work of the government, either a greater and greater amount of time and labor must be devoted by the several appropriation committees to the consideration of service estimates and by Congress as a whole to action upon its committees' recommendations, or that this work will be done with constantly decreasing care. Under the proposed plan the greater part of this burden will be performed by the boards of directors of the several subsidiary service corporations.

It is of the essence of the proposal that each subsidiary corporation shall have its own distinct budget. This budget will be prepared in substantially the same manner that the budget

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of the general government is, or rather should be, prepared. Estimates of financial needs will be prepared by the directing administrative staff of the service corporation and submitted to the board of directors. The latter will consider these estimates and on this basis prepare a budget for submission to Congress. The point may here be made that, inasmuch as under this plan Congress will still have the obligation of considering and acting upon this budget, it will not be relieved of any of the responsibility and work under which it now rests. This, however, is not the case. This budget, in the first place, by the mere fact that it relates to the operations of a distinct service wholly detached from the general financial operations of the government, and presents in one document both revenue and expenditure statements and a balance sheet, gets before Congress the problem of making provision for the service in question in a far more effective way, and one in which it can be more easily handled, than if it were presented merely as a set of items in a general book of estimates. If properly prepared it furnishes a complete and systematic showing of past operations, present conditions and proposals for the future. This budget, moreover, instead of coming to Congress directly as an estimate prepared by the persons charged with the administration of the service, has first been passed upon and reviewed by a body whose duty it is, acting as the agent of Congress, to exercise a general supervision and control over the acts of such administrative officers. This direct supervision and control, moreover, is exercised by a body technically qualified to pass upon the needs of the service and in constant direct touch with its operations. Normally Congress can accept the judgment of this body in respect to details and can thus limit its own participation to that of considering the budget in its general aspect and as involving matters of general policy or of major importance.

If all the services having the characteristics which we have enumerated as ones warranting their treatment as separate corporations are treated in this way a double benefit will result. In the first place the problem of adopting a financial and work program for each will, as we have seen, come before Congress as a separate and distinct problem. In the second place the

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general problem of financing the government will be correspondingly lessened and simplified. The conviction is constantly gaining strength that the system of financial administration of the national government should not only include, but rest squarely upon, a budget, as in all other countries having modern political institutions. The attempt to bring together in one comprehensive statement, or set of statements, all the resources and obligations and revenues and expenditures of the government, with estimates of the financial requirements for the future of all services and all categories of work, so co-ordinated, classified and analyzed that they may be given effective consideration, is an undertaking of great magnitude and difficulty. Anything that will tend to lessen or simplify this problem will contribute just so much to the working-out of the general problem of putting the administration of the financial affairs of the government generally upon a more satisfactory basis. With special budgets for the subsidiary service corporations, the general budget will contain but a single entry in respect to each, either an entry on the revenue side, if the service produces a net surplus available for payment into the general treasury, or one on the expenditure side if there is a deficit in operation that has to be met from general funds. Through these entries the special budgets will be tied into the general budget and their influence upon the latter thus properly determined.

It will be noted that this procedure means that to this extent the general budget will be what is known as a net, instead of a gross, budget. As regards services of general administration, the gross-budget principle is undoubtedly the desirable one. The services which it is proposed shall be treated as subsidiary corporations are, however, of a different character. In their case expenditure normally increases with the steady development of the country or the scope of their operations, and is for the most part accompanied by a corresponding increase in their revenues. Such increased expenditures do not represent an increase in the cost of government proper in the same way as do expenditures for the general operations of government. The inclusion in the general budget of their net results only, thus causes the latter to give a much fairer statement of the

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progress of real government revenues and expenditures than if their total revenues and expenditures were included, as is the case at the present time.

In considering this matter of the change that would be introduced in the method now employed in making provision for the financial needs of the services, attention should be given to the suggestion made by the present writer in another paper, that our system of financial administration should make provision for the sub-allotment of appropriations to specific purposes or subdivisions of a service by executive officials.[1] This proposal, in brief, is that Congress make its appropriations under general heads and entrust to the executive officials having their expenditure the sub-appropriation or allotment of these funds to more specific purposes. To insure proper action by these officials, and effective control over them, the project carries with it the requirement that these officers shall make their allotments in as formal a manner as Congress does in making its appropriations; that accounts be opened up with each allotment; and that full report be made to Congress of the manner in which appropriations are allotted, all transfers effected between allotment heads, and expenditures under these allotments. The ends sought by this proposal are: the relief of Congress from the consideration of details of appropriations; the vesting of the fixing of these details in the heads of offices personally familiar with the needs of the services and responsible for their conduct; and the making more flexible of the present extremely rigid system of appropriation as regards their expenditure; while at the same time taking every precaution, through the requirements of a formal procedure for the keeping of accounts and the rendering of reports, that accountability on the part of the allotting and expending officers is ensured and final control by Congress preserved unimpaired. Mention is made of this proposal, since it is evident that the system of subordinate service corporations would lend itself to its employment. Congress would have the duty of making appropriations under

[1] "Allotment of Funds by Executive Officials an Essential Feature of any Correct Budgetary System." Proceedings of the American Political Science Association, 1912.

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general heads while the sub-allotment of these appropriations would be performed by the boards of directors of the service corporations.

Another important merit of the service-corporation plan of organization is that it would promote in a very material way the exceedingly desirable end of taking the purely business and technical services of the government outside of the domain of politics. The mere fact of separating the organization and operations of these services from that of the general organization and operations of the government would tend to emphasize their non-political character, and make it easier to resist political pressure in respect to both their work and their personnel. The experience of the Interstate Commerce Commission demonstrates that it is quite possible to bring into existence a subordinate body having the general character of a service board of directors that will eliminate from its action all political considerations. No small advantage of the proposal is the extent to which it would promote or facilitate the course of civil-service reform and the principle of putting the business branches of government upon a purely business basis.

Having considered the proposal for the establishment of service corporations in its more general aspects, it remains for us to consider what would be the effects of this policy upon the services themselves. Viewed from this standpoint, there can be no serious question that these effects would be wholly beneficial. Foremost among these advantages would be the extent to which it would tend to erect each service so treated into one offering a special career to all of its personnel. A prime characteristic of these services is the extent to which they call for employees possessing technical, as opposed to general clerical and administrative qualifications. If competent men are to be found for these positions and retained in them, it is imperative that such men shall not only be paid an adequate compensation, but be afforded an opportunity for advancement in their chosen profession. This can be done only when the technical personnel of each service is carefully classified and a satisfactory promotion system devised and operated. It is notorious that, at the present time, neither of these condi-

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tions is adequately met in the administrative services of the national government. The salaries paid to technical employees, or at least those of higher rank, are far below those paid to corresponding employees in private undertakings. In exceptional cases only are these employees satisfactorily classified, is the range of compensation wide enough, or are proper promotion systems in use. But few services of the government thus offer anything like an attractive career to young men of ability, technical attainments and ambition.[1] It is not contended that these conditions cannot be attained under the present organization of the administrative service. It is maintained, however, that the work of meeting these conditions will be greatly facilitated by the proposal here made that these technical services be erected into administrative entities, the immediate control of whose affairs will be in a technically qualified board.

Second, the giving to each of these services a distinct life of its own cannot but tend to promote the development of an *esprit de corps* and interest in the service on the part of its personnel that is not always now present. All, from the highest officer to the lowest employee, will know that any benefits resulting from increased economy in the expenditure of funds, from increased efficiency in the performance of duties, or from securing increased revenue, will accrue directly to the service instead of to a general organization and treasury in which it has but little direct interest. At the present time each service occupies the position toward the general treasury of a claimant seeking to get all it can and having no direct interest in the sum that it turns in. It feels that it is but one of a number of claimants; that any curbing of its demands means only that more remains for other services; that if it seeks to effect such savings as those secured by the sale of equipment and supplies no longer needed by it, it will in no wise profit since the proceeds will be turned

[1] The military and naval services constitute notable exceptions to this statement. Among purely civil services the nearest approach to satisfactory conditions in this respect is to be found in the corps of examiners in the Patent Office and the medical corps in the Bureau of Public Health of the Treasury Department. These exceptions but serve to demonstrate the need for similar conditions in respect to the technical personnel of all the services of the government.

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into the general treasury as miscellaneous receipts for which it will receive little or no credit. Under the proposed plan all of its demands will be demands upon its own funds and all revenues will accrue to its own treasury. The incentive to increase revenue receipts and to keep down expenses, to practise economy, and generally to conduct affairs in an efficient manner, cannot but be far greater than it is under existing conditions.

In respect to the actual work of administration the proposed plan will mean that the current direction of affairs will be in the hands of a body which cannot fail to be technically better qualified for this work than Congress. This will be due, in the first instance, to the fact that the members of the corporation's board presumably will be selected with special reference to their qualifications for their positions. Their competence in this respect will steadily increase as they gain familiarity with their duties and experience in their exercise. Finally, they will have but one distinct class of duties to perform, while members of Congress are called upon to act upon matters of a wide range.

A further fact of importance is that they will exercise their duties continuously and with a freedom of action that is impossible for Congress. Congress is in session only part of the time. While it is in session, only a small part of its time can be devoted to the affairs of any one service. When it does act it can do so only through the laborious process of legislation. Action once taken can be modified or corrected only after great delay and with much difficulty. The board of directors of a service corporation is, so to speak, in continuous session. In reaching decisions it can avail itself of the knowledge and judgment of the working staff of the service, to a degree that Congress finds it difficult to do. Decisions once made can be promptly amended or revised as experience dictates. Action which often requires months or years to secure from Congress can be taken at once. Flexibility will replace the rigidity which characterizes the present system of congressional direction of details.

Another most important advantage of the proposed plan is that each service so treated will be put in a position where it can work out and operate an accounting and reporting system

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adapted to its special needs. It is an open question whether the attempt should be made to apply generally to government operations principles of accounting and reporting such as obtain in private undertakings. There can be no question, however, that, as regards all those government services whose operations are of an industrial or commercial character, every effort should be made to instal accounting and reporting systems corresponding to the most approved principles and procedure of modern practice. This means that such systems should provide for proprietary as well as operating accounts, the use of balance sheets, and, as far as circumstances will permit, systems for the determination of costs. The problem of a proper system of proprietary accounts and of cost keeping is a special one for each service. It is consequently difficult to work out such a system for a service unless it has substantial financial autonomy. Criticism in respect to the higher cost of government management in comparison with that of private undertakings has to do chiefly with those activities of the government which are of an industrial or commercial character. It is of the utmost importance that the government should so keep the accounts of its activities of this character that accurate comparison of its costs with those of corresponding or analogous work being done under private auspices can be established. Without such knowledge, it is impossible for Congress and the public to determine the efficiency with which these operations are being carried on, or to frame policies in respect to the extension or curtailment of work and the entering of new fields of activity.

All that has been said regarding the industrial services of the government applies with equal force to the general supply departments—the Government Printing Office, the Bureau of Printing and Engraving, and the General Supply Committee should that body be erected into a fully-developed supply service instead of being, as it now is, nothing more than a general contracting board. These services raise the interesting question of the relations that should exist between the several service corporations and between them and the other services of the government. Many cases present themselves where it is desirable that one service make use of the property or services

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of another. In all such cases the relation should be precisely that of one private corporation to another. The service permitting the use of its property by, or rendering service for, another service should make a proper charge for the same, and compensation should be made either by a transfer of cost or a corresponding transfer on the books of the treasury. Under the plan proposed these relations between the several services can be equally, if not more effectively, handled than under existing conditions, and the real revenue and cost of the several services can be more accurately determined.

Another consideration that will have to be met is that of making provision for the capital outlay of services requiring expenditures of this character beyond the resources of their current revenues. In Great Britain this point is handled by the general treasury making what are in effect loans to the several services, or by the issue of bonds to the public, which loans are amortized by annual payments by the services, constituting items in their annual budgets. This would seem to be an excellent method of meeting this point.

In seeking as we have done to point out what appear to us to be advantages in the foregoing proposal, sight is not lost of the fact that the attempt to put this plan into execution will present a number of questions offering no small difficulties of solution. Among these the most important will be that of fixing the precise relation of the boards of directors of service corporations to Congress. In respect to this it should be established in the most definite way that no abdication of authority on the part of Congress is contemplated. That authority not only must remain unimpaired but must be currently exercised. The problem is purely one of Congress delegating the exercise of this authority to a subordinate body without divesting itself of either its general responsibility or its power to exercise such general direction, supervision and control over the actual conduct of the affairs of government as circumstances render desirable. Direction, supervision and control over operations may be exercised in two ways: by specifying in advance precisely what a subordinate agent may do, what organizations it shall have, and what procedure it

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shall follow, or by giving to such agent a more general power of attorney, but at the same time taking full care that accurate record and report are made by it of precisely how this power is exercised. At the present time Congress relies largely on the first method. The present proposition carries with it the assumption that chief reliance will be placed upon the second. It is imperative, therefore, that if service corporations are set up, the most careful provision shall be made that the most approved methods of accounting are employed, and that the reports to be rendered shall be of such a character as to permit Congress at all times to see how operations are being conducted by its agents. It is recognized that great difficulty will be encountered in getting Congress to be willing to surrender its present immediate control over the operations of these services. It is the position of this paper that with the growing work of government this surrender must in fact be made in some way, and that as this is so, the form here suggested, through the establishment of service corporations, is the most effective way of accomplishing this surrender.

In this connection it is important to note that the action here proposed is neither so novel nor so revolutionary as might at first sight appear. We have already pointed out that this is substantially what a state does when it establishes municipal and other local corporations, boards of education, health, charity, corrections etc. A still more direct illustration of the actual adoption of this proposal is, however, offered by the national government itself. This consists in the provision made by Congress for the government of the District of Columbia, the Philippines, Porto Rico and the territories and dependencies generally. The administration of the affairs of these territories is as direct an obligation on the part of Congress as that of the operation of the Panama Canal, the construction and operation of a railway system in Alaska, or the conduct of the postal service in this country. Its legal relation to both these classes of undertakings is precisely the same. It can, if it choose, administer their affairs directly, as it can bring into existence subordinate bodies and delegate to them immediate responsibility, reserving to itself the superior direc-

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tion, supervision and control. In the case of the dependencies, Congress has done precisely what it is here urged it should do in the case of these services of the government which have distinct spheres of activities unconnected with the general operations of government, which are in possession of their own income, and in respect to which motives of economy and efficiency would seem to dictate that they be treated as separate entities by having conferred upon them the largest possible measure of legal, administrative and financial autonomy. Each of these has been erected into a subsidiary corporation, with its own property, revenues, expenditures, accounting and reporting system, its own board of directors, administrative staff and personnel distinct from those of the general government. Each has had granted to it large authority to manage its own affairs. In making this large delegation of powers Congress has in no respect lessened its own power to act at any time when it sees fit to do so, or relieved itself from its general responsibility. At any time it can enact legislation modifying the charter or organic act of the subsidiary corporation. It is always free to pass acts regarding the conduct of affairs in such dependencies, even though such affairs are within the scope of powers of the dependencies. All acts of such subordinate corporations, moreover, must be reported to Congress, and the latter can at any time modify them or set them aside. Careful provision, moreover, is made that each such subordinate corporation shall keep an account of its financial and other operations and make report annually regarding them, to the end that Congress shall always be in a position to know how affairs are being conducted by its agents.

Regarding the success of this policy there can be no question. A study of the problem of colonial government and of the experience of the various nations having colonial systems, in respect to the policies pursued by them in the administration of the affairs of their dependencies, shows that no greater mistake can be made by the central government than to attempt itself directly to manage the affairs of such territories or to refuse to give to them substantial antonomy in respect at least to their financial operations. In no small degree the success of

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Great Britain and the United States in the management of their colonial possessions, in comparison with that of other nations, is due to the greater extent to which this policy has been pursued by them.

It will, of course, not escape notice that in these cases we have an example of the use of the principle of subsidiary corporations for the purpose of effecting a distribution or delegation of governmental powers territorially, while what is proposed in this paper is the application of this principle to the distribution or delegation of powers functionally. It is this distinction which gives to this proposal its novel character. Notwithstanding the importance of this distinction, the principle involved is in both cases the same, and it is difficult to see why it is not of equal applicability to a functional service provided that service has a distinct sphere of activities outside the general duties of government, and possesses the other attributes which we have pointed out as ones which should be given weight in selecting the service for treatment in this way.

In regard to this point it is moreover of importance to suggest that the government, while not adopting the policy of creating subsidiary corporations of a functional character as a deliberate policy, as it has done in the case of territorial administration, has, nevertheless, already made steps in this direction. One of the most significant features of recent action by Congress in the erection of services for the conduct of new lines of activities assumed by the government, is the extent to which the board or commission form of organization has been adopted instead of the bureau form, where direct powers of administration are vested in a single bureau chief. A study of the organic acts for these services—the Interstate Commerce Commission, the Federal Trade Commission, the Federal Reserve Board, the Federal Farm Loan Board, the United States Employees' Compensation Commission, the Alaskan Engineering Commission, and the Shipping Commission—shows that large powers of subsidiary legislation in the way of board or commission orders and of determining administrative organization and procedure through board or commission rules and regulations have been conferred upon them. Certain of these services have been

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given this form of organization since the character of the work to be performed by them partakes of a quasi-legislative or quasi-judicial character. This, however, is not so in all cases.

Though the establishment of these boards and commissions may be regarded as a step toward the adoption of the policy of creating subordinate corporations of a functional character, it nevertheless lacks the essential character of such a policy in that in no case are such services erected into entities autonomous from the standpoint of organization, personnel, property or finance. They are mentioned here merely as evidence that Congress has recognized the necessity for delegating the exercise of a portion of its authority to subordinate bodies. Though obtaining a certain relief in this way, it has been far from obtaining the relief that it would get were it whole-heartedly to act upon the policy of establishing fully autonomous subsidiary corporations.

In conclusion, it may furthermore be noted that the policy proposed not only may, but probably should, be put into effect gradually. A start might be made with some one service, such as the Alaskan Engineering Commission or the Panama Canal. On the basis of the experience thus gained, the policy could be progressively extended to the other services of the character described.

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SOCIAL WELFARE IN RATE MAKING

THE power to regulate the rate systems of public utilities is of great importance to social welfare, because the rates which such corporations charge for their services may have far-reaching social effects upon the community. It is, indeed, this very fact that has been one of the motives underlying the movement for government ownership. In government hands, it is urged, the rates of public utilities can be so fixed as consciously to promote the social well-being. It is pointed out by advocates of government ownership that this was one of the ends aimed at in the purchase of railroads, street railways, gas, electric and waterworks by the governments and municipalities of Europe—and particularly of Germany. As evidence of the results attained in this direction attention is called to the cheap workmen's tickets which have been offered on the municipal street railways, encouraging the relatively poorer classes of the people to live in the suburbs, and thereby tending to relieve congestion in the cities. Low fares granted to school children have had a similar effect and have rendered educational advantages more readily accessible to the masses. Moreover it is said that the standards of living of the people have been raised by bringing such modern conveniences as gas, electricity and abundant water supply within the reach of families of slender means. These and many other beneficent social results are put to the credit of government ownership.

In the United States, for the present at least, we have committed ourselves to a program of regulation. Such being the case, it becomes important to determine how far it is possible to fix rates on a basis of social welfare under that policy. Living, as we are in this country, under a legal system built upon a practical sanctification of property rights, can the government regulate the rates of public utilities so as to promote the greatest social well-being of the community? Can public service commissions adjust rates, if they deem it advisable, so as to relieve

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congestion, encourage education, raise standards of living, develop communities, foster industry, and accomplish other similar purposes? Upon the answer to such questions, in part, the program of regulation must be judged.

In legal theory the regulation of rates is based upon one or both of two general principles—the cost of the service or the value of the service,[1] or a modification of them. It is in the application of these principles that questions affecting the social welfare may arise. In a given case, for instance, the regulating authority must decide which one of them shall be applied. Then, if the cost of service be taken as a basis, the further question arises as to how far this shall be carried, whether it shall be applied to the rate schedule as a whole or extended to each class of rates in that schedule, and what percentage of return over and above actual cost shall be allowed. If the value of the service be accepted as the criterion, it becomes necessary to decide whether all that the traffic will bear shall be allowed or only a part of it. Many factors must be considered in determining these issues, and the regulating authorities are frank to recognize social welfare as one of them. An analysis of their attitude in applying the cost-of-service and the value-of-service principles to specific rate systems will show to how great an extent this social factor may be admitted.

Before passing to a discussion of these points, however, it is necessary to point out the legal basis on which considerations of social welfare in rate making are grounded, as well as the limitations to which they are restricted. In the last analysis all rate regulation rests on the public interest. It is because their business is affected with a public interest that the utility cor-

[1] B. Wyman, The Special Law Governing Public Service Corporations. 2 vols., 1911, no. 1071. Beal & Wyman, Railroad Rate Regulation. 2d. ed., 1915, no. 381. The terms "cost of the service" and "value of the service" are used here in a legal rather than an economic sense. "Cost of the service" refers to the fixing of rates by regulating authorities on the principle that the rate should be equal to the actual cost of furnishing the service in question, plus a reasonable return. "Value of the service" is the principle of allowing utilities to charge rates varying considerably from actual cost plus fair return, according to the demand, or according to "what the traffic will bear." Rates based on the value of the service, however, do not necessarily mean charging all that the traffic will bear.

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porations are subject to regulation by the state.[1] The rights of the public have always been recognized. Twenty years ago the Supreme Court declared: "It cannot be said that a corporation is entitled as of right, and without reference to the interest of the public, to realize a given per cent on its capital stock. . . . The public cannot properly be subjected to unreasonable rates, in order simply that stockholders may earn dividends."[2] The doctrine was repeated in Smyth *v.* Ames,[3] where the court declared that a railroad cannot "fix its rates solely with a view to its own interests and ignore the rights of the public." This fundamental principle is too well known to need further elaboration, but it is necessary that it be emphasized at this point, for it is here, if anywhere, that any legal justification for the admission of social welfare as a factor in rate making is to be found.

Under our legal system, however, even the rights of the public are restricted by the constitutional protections to property. It is hardly necessary to go into these in detail. The Constitution provides that no person shall be deprived of property without due process of law, and that no person shall be denied the equal protection of the laws. These provisions are the basis for prohibiting confiscatory or discriminatory rates, and they are of compelling force here. Social welfare does not justify a rate so low that it does not provide a fair return upon a fair value, nor a rate markedly favoring some consumers at the expense of others. It is evident at once, therefore, that such cases as those in Europe where publicly owned utilities have been run at a financial loss for the sake of the broad social gains thereby involved cannot be duplicated for private utilities in this country under a program of regulation. Moreover, if rates are made to encourage particular industries, regions or classes whose development is believed necessary to the social well-being, such rates may be overthrown as constituting an illegal discrimination.

[1] Munn *v.* Illinois (1876) 94 U. S., 113.

[2] Covington & Lexington Turnpike Co. *v.* Sandford (1896) 164 U. S., 578.

[3] (1898) 169 U. S., 466.

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It was formerly held by the courts that while a public utility must earn a fair return from its rate schedule taken as a whole, this rule need not apply to every class of service under that schedule. This meant that the company might be compelled to perform some services, or to operate a particular part of its business at or even below cost, so long as its tariffs *in toto* were sufficient to provide an adequate income. In Minnesota & St. Louis R. R. *v.* Minnesota,[1] for instance, the constitutionality of a rate on coal was attacked on the ground that if this rate were applied to all the freight business of the road its income would not constitute a fair return upon its investment. The rate was upheld by the Supreme Court on the ground that "it may well be that the existing rates upon other merchandise, which are not disturbed by the commission, may be sufficient to earn a large profit to the company, though it may earn little or nothing upon coal in carload lots." Similar decisions were rendered in other cases.[2] These decisions were interpreted by legal authorities as permitting rates on specific parts of a company's lines or on particular classes of its traffic at or below cost, so long as the return from the entire rate schedule was adequate.[3] This interpretation was followed by the lower courts. It can readily be seen that it permitted commissions a wide range of discretion in shaping rate schedules so as to promote the social welfare. Reeder, for instance, says in regard to it that "even if it were proved that under a particular regulation the company would not receive even the operating expenses, the regulation would not necessarily be unconstitutional."[4] It is conceivable under this interpretation, therefore, that a transit company might be compelled to offer a low rate for service on certain of its lines to develop particular sections of a city or to relieve congestion. Railroads might be compelled to transport school children at low rates in furtherance of education. Small con-

[1] (1902) 186 U. S., 257.

[2] Particularly St. Louis & San Francisco Ry. *v.* Gill (1895) 156 U. S., 649; Simpson *v.* Shepard (1913) 230 U. S., 352 (466).

[3] R. P. Reeder, Validity of Rate Regulation, 1914, no. 184 *et seq.*, where additional cases are cited. See also Bruce Wyman, *op. cit.*, no. 1063.

[4] *Op. cit.*, section 186.

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sumers of utility services could be encouraged by rates favorable to them. In short, rates could be regulated so as to accomplish nearly as much as is claimed for the rate systems of the municipally owned public utilities of Europe.

This doctrine has been completely upset in a recent decision by the Supreme Court, averring that its previous decisions had been misinterpreted. The case was that of Northern Pacific Railway *v.* N. Dakota.[1] The state of North Dakota, with the aim of encouraging the lignite coal industry in that state, deeming that it was thereby promoting the general welfare, had fixed a low rate on coal in carload lots. It was shown that the rate fixed compelled the railroads to carry lignite coal at or near cost, although their rate schedule as a whole was amply remunerative. The court set aside the rate as confiscatory in violation of the due-process clause of the Constitution. Justice Hughes in delivering the opinion of the court, said:

> But, while local interests may serve as a motive for enforcing reasonable rates, it would be a very different matter to say that the state may compel a carrier to maintain a rate upon a particular commodity that is less than reasonable, or—as might equally well be asserted—gratuitously, in order to build up a local enterprise.

He also declared:

> The fact that the property is devoted to a public use on certain terms does not justify the requirement that it shall be devoted to *other* public purposes. . . . The public interest cannot be invoked as justification for demands which pass the limits of reasonable protection and seek to impose upon the carrier and its property burdens that are not incident to its engagement.

Thereupon the following principle was laid down:

> Where it is established that a commodity, or a class of traffic, has been segregated and a rate imposed which would compel the carrier to transport it for less than the proper cost of transportation, or virtually at cost, and thus the carrier would be denied a reasonable reward for its service after taking into account the entire traffic to which the rate applies, it must be concluded that the state has exceeded its authority

[1] (1915) 226 U. S., 585.

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This decision, which has been followed in a number of succeeding cases,[1] strikes a severe blow at social-welfare rate making by effectually closing up the greatest avenue for its exercise. It is to be noted that the court, while it acknowledges the validity of considering the "public interest" in rate making, sets rigid limitations thereon, and specifically denies that a rate can be fixed whose purpose is the securing of social gains not directly incident to the functions of the utility corporation. Moreover it emphasizes increasingly the cost-of-service principle as the fundamental determinant of rates. Private property is thereby entrenched more securely than ever and a serious setback is given to the possibilities of a program of regulation.

In view of these restrictions, it may seem as if any endeavor to bring about social amelioration by rate regulation necessarily must be very feeble. It is true that the limitations, as interpreted by the courts, have made the social-welfare factor in rate making weaker than it was before. In fact, however, there is more room for this to be considered than is at first apparent. This has been recognized by the Supreme Court in the case of Norfolk and Western Railway *v.* Conley,[2] where, commenting upon its former decision in Northern Pacific Railway *v.* North Dakota,[3] it said:

> It was recognized that the state has a broad field for the exercise of its discretion in prescribing reasonable rates for common carriers within its jurisdiction; that it is not necessary that there should be uniform rates or the same percentage of profit on every sort of business; and that there is abundant room for reasonable classification and the adaptation of rates to various groups of service.

It would thus appear that the rate-regulating authority, while it must make each rate (or at least each class of rates) high enough to bring in a reasonable return, may invoke considera-

[1] Norfolk & Western Ry. *v.* Conley (1915) 236 U. S., 605. U. P. R. R. Co. *v.* Public Utilities Com. of Kansas, Public Utilities Reports Annotated (hereinafter referred to as P. U. R. 1915) D, 377. *In re* N. E. Kansas Telephone Co., P. U. R. 1916 B, 925. Butler *v.* Lewiston, A. & W. St. Ry. Co., P. U. R. 1916 D, 25.

[2] *Supra*, note 1.

[3] *Supra*.

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tions of social welfare to determine what rate of return is reasonable in a given case, and that it need not allow the same proportionate return in every case. Thus the North Dakota Board of Railroad Commissioners, after the rate on coal had been declared unconstitutional in the case above cited, in fixing a new rate pared the "reasonable return" as low as it dared. It pointed out that the Supreme Court had conceded that local interests might serve as a motive for enforcing reasonable rates, and that it had therefore taken into consideration, in fixing the new rate, the fact that the lignite coal industry is fostered by the legislature of North Dakota, and is one which it is the policy of that state to encourage.[1]

The significance of these principles, and of the extent to which they are applied, can perhaps be best shown by a discussion of some specific rate questions in which problems of social welfare appear. One such problem is to be found in the attitude of American law toward suburban railway fares.

It is sound social policy to adjust these fares so as to relieve congestion in the large cities. While the American law does not permit this policy to be applied to so great an extent as would be possible under government ownership, it does permit the existence of relatively low suburban rates in the form of commutation railway tickets. These tickets are not based on a strict mileage rate, for the rate per mile becomes less as the distance from the city increases. They are issued to a favored class of customers, the commuters, or persons who make the trip daily or frequently from the suburbs to the city. Thus permanent residence outside the thickly populated districts is made possible for the individual whose place of business is in the congested zone, and the more distant his residence the more favorable is his rate, so that the man who lives fifteen or twenty miles from the city pays little more for daily transportation than he who lives only ten miles away. Moreover, what little extra he does pay is probably compensated by the lower rent which he is charged in the further outskirts of the city. Such commutation tickets have been held by the Supreme Court[2] not to be

[1] *In re* Lignite Coal Rates, P. U. R. 1915 F, 190.

[2] Interstate Commerce Commission *v.* Balto. & Ohio Ry. Co. (1892) 145 U. S., 263.

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unlawful discrimination. The text of the Interstate Commerce Act, as well as the statutes of many of the states, specifically declare that commutation tickets shall not be considered illegal discrimination. The Interstate Commerce Commission has held that once low commutation rates have been established voluntarily by the railroads, public utilities commissions may compel their continuance and may pass upon their reasonableness.[1] In rendering this decision the commission gave candid recognition to the principle of social welfare in rate making when it said:

It will not be necessary to dwell here upon the importance of the question not only to the particular surburban communities involved in the record before us, but to many other such communities throughout the country, the prosperity and growth of which largely depend upon an efficient and reasonable commutation service. Many such communities have not only been encouraged by the carriers, but were in fact originally established largely on their initiative. Surburban property has been bought, homes have been established, business relations made, and the entire course of life of many families adjusted to the conditions created by a commutation service. This may not have been done on the theory that the fares in effect at any particular time would always be maintained as maximum fares, but countless homes have been established in suburban communities in the belief that there would be a reasonable continuity in the fares and that the carriers in any event would perform the service at all times for a reasonable compensation.

In another case[2] the Commission said:

They [commutation rates] tend to benefit the public by permitting and encouraging residence at a considerable distance from the place of occupation, thus aiding the territorial growth of cities and relieving their congested districts. So far as they have that effect such rates in turn benefit the railways by securing business that otherwise would not be obtainable.[3]

While the beneficent social results are thus used as justifica-

[1] Commutation Rate Case (1911) 21 I. C. C. Rep., 428.

[2] Sprigg *v.* Balto. & Ohio Ry. (1900) 8 I. C. C. Rep., 443.

[3] See also R. R. Passenger Rate Case (Mass.) Pub. Ser. Com. P. U. R. 1915, 362, and *In re* Passenger Rates (N. J.) P. U. R. 1915 B, 161.

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tion for placing commutation rates under the jurisdiction of th rate-regulating authority, and for compelling the continuanc of such rates, once they have been established by the railroads it is the cost-of-service principle which must finally determin whether the rate is reasonable. The case of Northern Pacifi Ry. *v.* North Dakota would clearly apply here. If the lo commutation rates did not in fact yield a fair return to th railroad over the costs of providing its suburban service, th rate would evidently be unconstitutional. In the Commutatio Rate Case above referred to, after making the statement quoted, the Interstate Commerce Commission proceeded t examine the costs in finally passing upon the reasonableness o the rates under consideration. The real legal weakness of th social-welfare principle as a factor in rate making is here ap parent. In the last analysis it is cost of service that is th determinant. Fortunately for the public, commutation costs ar actually less than the costs for other kinds of traffic. "Th bulk of this traffic moves regularly and hence more nearly ex hausts the potential capacity of the equipment than most othe classes of riders. . . . Also not all the trips are used. . . . may be, and probably is, the fact that it costs less per passenge per mile to transport commuters than one-way passengers." It just happens, then, that the cost of service operates here t the relief of congestion. Were it not so, the social well-bein would probably have to bow before the interests of property.

The fundamental impotence of the rate-regulating authorit as a promoter of the social welfare, however, is shown by th fact that it cannot under the Interstate Commerce Act compe the carrier to initiate low commutation rates where they hav not previously existed. While this does not appear to hav been definitely stated by any court, it is implied in most of th commutation cases. It is only because the railroad, once hav ing established commutation rates voluntarily, has assumed sort of obligation to the communities dependent on its service that it can be compelled to continue the rates. Custom, prece dent, the development of suburbs on the tacit assumption tha

[1] *In re* Passenger Rates (N. J.) P. U. R. 1915 B, 161.

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he rates will continue, and the stimulation of the growth of the suburbs by the railroads, place upon the latter the duty of maintaining the practice. But the Interstate Commerce Commission says: "It is conceded . . . that a carrier cannot be compelled, under the present law, to undertake a commutation service and to establish commutation rates. That is probably true."[1] It is within the power of the legislative body, presumably, however, to compel the railroads to establish such rates.

Similar in principle to the commutation fares is the practice of offering monthly tickets at reduced rates to school children. The encouragement of education by the offering of such rates is plainly conducive to the social welfare. Such favorable rates have long been maintained by American railroads and have received the sanction of the courts. Cheap tickets for school children are justified on the same grounds as commutation tickets, except that here the social considerations are even more compelling. Their status in rate-regulation law is practically the same as that of the commutation fares. The laws of Massachusetts[2] provide that the rate for school children on all street railways "shall not exceed one-half the regular fare." In commenting on this the Massachusetts Public Service Commission says: "The burden so imposed upon the companies is in the nature of special taxation, and rests upon an authority possessed by the legislature."[3] In general the low school rate, like the ordinary commutation fare, is based on the lower cost of handling such traffic. Thus the Maine Public Utilities Commission justifies such rates because the school traffic is not at rush hours, because it entails no additional expense to the carriers, and because the traffic is so much greater as a result of the low fares that it averages a return as great as when higher rates are exacted.[4] Some commissions have even very recently upheld school rates on grounds of social welfare where it is doubtful

[1] Commutation Rate Case, p. 529, n. 1, *supra*.

[2] Statutes, 1908, chap. 530.

[3] *In re* School Committee of Canton, Public Service Commission 886, P. U. R. 916 B, 361.

[4] Cited in *Public Service and Federal Trade Reporter*, Dec. 15, 1914, p. 718.

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whether such rates covered the costs,[1] but in view of th Supreme Court decision in Northern Pacific Railroad *v.* Nort Dakota, it is certain that such rates must be unconstitutional.

An important social problem is presented by the incidenc of terminal charges in railway rate making. With the rapi development of large cities in America the railroads have foun it necessary to erect costly terminal facilities in order to car for the increasing volume of traffic at these points. Extensiv yards, switching tracks, and loading and unloading facilitie had to be erected for freight shipments, while huge and mag nificent stations, electrical equipment and tunnels have bee provided for passenger service. Up to the present time ther has been no attempt to separate these enormous terminal cost from other expenses in railroading. This means that traffic t these terminal points pays no extra charge for the use of th facilities offered, these costs being divided equally between a traffic, whether making use of the terminals or not. The effec of this system is to give an undue advantage to the large cen ters and to place the burden thereof on the country in genera The large cities are really getting service at less than cos business in those centers is unduly stimulated, manufacture are developed at the expense of agriculture, more expensiv ways of doing business are promoted, and the problems o urban congestion are accentuated by placing a tax on the res of the country.

While the issue involved here has never been passed upo directly by the courts, they have by implication given their ap proval to the present system. The Interstate Commerce Com mission, ignoring the principle of cost here, and following th

[1] *In re* Idaho Traction Co., P. U. R. 1915 D, 742. Here a needed increase i the revenues of a railway company was permitted by an increase in interurban fare a similar increase in school tickets being denied. The commission said: "Whil the present rate may seem unreasonably low, it has given to many children the ad vantages of good schools which a higher rate might put beyond their reach, and w fear that the proposed increase of 25 per cent might discourage some in their effor to obtain a better education."

In 1914 the New Hampshire Public Service Commission ordered reduced scho rates on the Manchester street railways, although the same rate if applied to th general public would not bring a fair return to the company. Cited in *Public Servi and Federal Trade Reporter*, Dec. 1, 1914, p. 685.

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ine of least resistance, has given recognition to the rates sanc-ioned by custom. In Associated Jobbers of Los Angeles *v.* Atchison, Topeka & Santa Fe Railway Co.[1] the commission enied to a carrier the right to add an extra terminal charge or freight where the delivery was made on the carrier's own nes. But in this case the extra terminal charge was denied ot because the principal of separating terminal and conveyance harges is deemed illegal, but because under the American ystem the flat conveyance rate has always been recognized as ıcluding the terminal costs, and it would be unjust discrimina-ion to charge twice for the same service. On the other hand he exaction of an extra terminal charge in addition to the egular rate has been upheld by the Interstate Commerce Com-ıission where the delivery is made not on the company's own nes, but upon the line of another railroad.[2] But the terminal harge is permitted in this case not because the principle of eparating terminal and line haul rates is approved, but because ıe connecting carrier exacts the charge from the initial carrier, nd the latter is therefore entitled to compensation from the hipper. The Supreme Court, while upholding the right of the arrier to divide the rate between conveyance and terminal harges in the case of delivery beyond the lines of the initial arrier, has taken pains to point out that it expresses no opinion s to the right of the carrier to make such a charge for terminal ervices on its own line.[3] The Interstate Commerce Commis-on, furthermore, has recognized that terminal expenses are an em of cost to be considered in determining the reasonableness f the general flat rate,[4] but this again is far from admitting the alidity of a rate system placing the entire cost of terminal ervices upon the traffic using those terminals, much less placing ıy duty on the carriers so to divide their rates.

The whole issue has now been put squarely up to the com-ıission in a petition recently filed, asking for a lowering of the

[1] (1910) 18 I. C. C. Rep., 310.

[2] Boardman Co. *v.* Southern Pacific Co. (1915) 37 I. C. C. Rep., 81.

[3] I. C. C. *v.* C. B. & Q. R. R. (1902) 186 U. S. 320, (335).

[4] New Orleans Vegetable Growers *v.* Illinois Central Ry. 34 I. C. C. Rep., 38; ıstern Live Stock Case (1915) 36 I. C. C. Rep., 675.

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rates on traffic to points on the New Jersey side of New Yor harbor. At the present time the rates to these points are th same as those to New York city, regardless of the fact tha there is an extra lighterage cost in handling shipments to th latter point. The New Jersey shippers are thus helping to bea the cost of that traffic, and they maintain that this is an unjus discrimination against them. The case is an important one, fo if the commission decides in favor of New Jersey, a preceden will be created that may have far-reaching effects. It wi practically amount to the establishment of the principle tha traffic to the big cities must pay its own terminal costs. Thes costs are heavy and will be sufficient to cause much of the manu facturing business of the country to betake itself to less con gested regions. From the standpoint of social welfare ther seems to be no justification for the present system. Moreove the apparent tendency of the courts to adhere more and mor closely to the cost of service as the final determinant in rat making would indicate the legal soundness of the principle c making the large cities bear their own terminal costs. Th tacit assent to the flat-rate system heretofore given by the Inte state Commerce Commission, however, and the serious dis turbance that would follow a decision in favor of the Ne Jersey petition—necessitating, as it might, a radical readjus ment of rate schedules all over the country, and causing a seri ous disruption of business—may well cause it to hesitate i taking such action. As the cost-of-service principle has worke for the social welfare in suburban railway fares, so also in te minal costs it will make for the relief of congestion, and in th end it seems likely that the courts will give it recognition.[1]

The same principle applied to another rate question, howeve is not so salutary in its effects from the social viewpoint. Th possibility of improving the standards of living of a communit by the maintenance of low rates on gas, electricity, water an telephones has already been referred to. Regulations tendin to maintain for such public utilities rate schedules that favo

[1] For a part of the foregoing discussion I am indebted to Mr. R. J. McFall, in h article "The Problem of Terminal Rates," in the *Public Utilities Magazine*, Janua 1917.

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ıe small consumer, therefore, is in accord with sound social olicy. A careful analysis of costs, however, will lead to rates istinctly unfavorable to small users. It is pointed out by ublic-utility experts that there are three costs in connection ith the furnishing of such services.[1] First there is the con-ımer cost, which includes such expenses as that of connecting ıe consumer to the company's mains, the clerical labor in-olved in the keeping of accounts and the rendering of bills, nd the installation and periodic inspection of meters. This is bviously a relatively greater expense in the case of the small onsumer than of the "wholesale" user. Then there is the emand cost, or "readiness to serve" or connected load cost, hich takes account of the maintenance of a plant sufficient to ıeet at any time the maximum potential load which the patrons f the utility may put upon it. This again favors the large and ıjures the small consumer, for the demand of the former is ıuch more regular and nearer the potential maximum than ıat of the latter. Finally there is the output cost, or actual uantity of service used, which is the same for all consumers. all these costs be allowed, the rate per unit for electricity, as or water will be relatively high for small domestic consump-on and extremely low for the industrial or commercial user. is possible to devise a cost system that will place upon the ompany the duty of finding such a market for its services and adjusting that market that the maximum potential capacity its plant will be utilized almost fully most of the time. Such cost system would be much more favorable to the small con-ımer because it would relieve him of the burden of most of ıe demand cost. As the principle has been little applied, how-ver, while the system above described has been quite generally lopted, the cost-of-service principle must be judged for the esent, at least, as injurious to the residence user.

[1] J. M. Clark, "Rates for Public Utilities," *American Economic Review*, vol. i, . 473–487. Halford Erickson, "Electric Lighting and Power Rates," *Annals of American Academy*, vol. 53, pp. 38–50. G. W. Fuller, "Elements to be Con-ered in Fixing Water Rates," *Annals of the American Academy*, vol. 53, pp. –61.

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Nor is the value-of-service principle any better. For i terms of "what the traffic will bear" the small user is agai the sufferer. The big manufacturing establishments, especiall in the use of electricity and gas for power, can substitute som other services if the rate does not suit them. Moreover, the can usually set up plants of their own and supply themselves a low rates if they cannot get satisfactory terms from the publi utility company. The residence user, however, must acce the service at the rate offered or do without. There is thus continual temptation to place upon the small consumer th greater part of the burden of maintaining the fixed charges.

The attitude of the rate-regulating authorities on all the i sues here involved does not seem to be entirely settled. I general it appears to be established that a lower rate to whol sale users is justifiable so long as it is based on actual diffe ences of cost. Thus in Western Union Telegraph Co. *v.* Ca Publishing Co. the Supreme Court held that it was not an undu preference to make a lower rate to one patron than to anoth where there existed "differences in conditions, affecting the e pense or difficulty of performing the service."[1] In pursuan of this doctrine, commissions have tended to allow public-util ties corporations to separate their costs so as to give substant ally lower rates to large users. The Wisconsin commission h frankly recognized rates based on all three of the elements cost analyzed above.[2] It has been held in the case of electr rates that the long-hour customer is entitled to a lower ra than the short-hour customer, and that a lower rate may b offered to long-term customers.[3] Readiness to serve has bee allowed in determining rates by the Oklahoma commissio Lower rates to wholesale users of natural gas have been allowe on this and similar differences of cost.[5]

[1] (1901) 181 U. S., 92.

[2] Madison Gas & Electric Case (1910) 4 W. R. C. Rep., 501. See also G. Watkins, "Electrical Rates in the Opinions of the Wisconsin Commission," *Qu Jour. Econ.*, vol. xxvii, pp. 373–8.

[3] Tamaqua *v.* Eastern Penna. Light, Heat and Power Co. (Penna.) P. U. R. 19 G, 430. For further cases see J. V. Oxtoby, Legal Phases of Central Station Ra Making for Electric Supply, 1911, pp. 31–32.

[4] Case Plow Works *v.* Oklahoma Gas & Electric Co., P. U. R. 1915 B, 183.

[5] Landon *v.* Lawrence, P. U. R. 1915 E, 763.

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But it is to be borne in mind that the lower rate is allowed ıe large user not because he is a large user, but because of fferent conditions of service, and any attempt to reduce the ıte to him so low that he does not bear his proportionate share the expense will not be allowed. In Hays *v.* Pennsylvania ailroad,[1] the court said: "A discrimination in favor of the ırty furnishing the largest quantity [of goods to be shipped], ıd solely on that ground—is contrary to a sound public policy." he Massachusetts Gas and Electric Commission refused to allow tes for electric street lighting which barely met operating cost, ith no allowance for depreciation, interest or dividends, and hich threw the entire burden of such charges upon the com- ıny's private customers.[2] Commissions need not tolerate any tual discrimination against the small consumer, and in the in- rest of social welfare may protect him as far as is consistent with e principles above stated. In *In re* Bell Water Co.[3] the Cali- rnia Railroad Commission decided that necessary increases the revenues of water companies should not be provided r simply by increasing the minimum charge; since the burden ıould be borne not only by those using far less than the inimum, but also by the larger consumer. In a case involv- g an increase in water rates[4] the Maryland commission, while lmitting that the rates asked for were not extortionate, pointed ıt that the residents of the community were earning small laries of from $1.50 to 1.75 per day and could not afford the oposed rates; and since a lower rate would still give a fair turn to the company, the increase asked for was denied. The klahoma commission, while recognizing the importance of ıcouraging manufacturers to locate in that state, will not ıthorize reductions in natural-gas rates for manufacturing pur- ɔses at the expense of domestic consumers.[5] These illustra-

[1] (1882) 12 Fed. 309.

[2] *In re* Quincy Electric Light & Power Co., Mass. Rep. 1907. See also Donovan Goldfield Consolidated Water Co., P. U. R. 1916 D, 419.

[3] P. U. R. 1916 D, 166 (174).

[4] Potee *v.* Brooklyn & Curtis Bay Light and Water Co., P. U. R. 1915 A, 43.

[5] Crystal Ice & Ice Cream Co. *v.* Oklahoma Natural Gas Co., P. U. R. 1916 A, 6.

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tions may suffice to show that while rates favoring large consu mers will be permitted notwithstanding considerations of soci welfare—so long as they are based on substantial differences cost—yet if the commission be inclined to protect the sma user, the social welfare is a sufficient consideration to prevei any unjust discrimination against him.

The cost-of-service principle has been shown to work for th social welfare in the case of commutation, school-ticket, an terminal rates, but to have the opposite effect as at present ap plied in rates affecting small and large consumers of gas, wat and electricity. There is another rate problem affected wit a social interest where the same principle strictly applied woul seriously interfere with the prosperity of business and the ge eral development of the community. This is in the case railroad freight rates. The public interest demands that th principle of value of service should be admitted as a valid co sideration here and the courts have been free to recognize thi Speaking of freight rates, Beale and Wyman say: "The commi sion has said repeatedly that consideration must be given to th value of service in determining the reasonableness of rates,"[2] an cite numerous cases to this effect. It is scarcely necessary t point out the importance of the freight-rate schedule to th well-being of a community. Modern business activity—agr cultural, manufacturing and commercial—is dependent upo the easy movement of commodities from place to place. this movement be interfered with, serious consequences fo the nation are threatened. Such easy movement is not po sible, however, under a rate schedule based strictly on the pri ciple of cost. There are many commodities, which, becaus of their low value, it would not pay to ship if they were force to bear their full share of the fixed and operating costs. Fo instance, one of the commissions has pointed out that th cost to a carrier of handling a carload of silk and a carload sand of the same weight is identical except for the liability in volved, yet if the cost were equally divided between them muc of the sand would not move.[2] In the Railroad Passenger Rat

[1] *Op. cit.*, section 435.

[2] *In re* A. T. & S. F. Ry. Co. (Mo.), P. U. R. 1916 A, 594 (694).

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Case[1] the Massachusetts Public Service commission says: "Undoubtedly the cost of service represents the most important and in many ways the fairest basis for fixing rates, but this basis cannot in all cases be inflexibly applied, owing to the economic necessity for moving certain traffic which could not be handled at all except at a relatively low rate."

If the rate be adjusted on a modification of the principle of cost, which allows a reasonable consideration of the value of the service to the shipper, the freight of high value, and traffic near its market can be made to average up rates in a measure with bulky freight of low value and with traffic distant from its market. Thus the greater part of the burden of profits can be shifted to those shippers best able to bear it, an arrangement which is both equitable and expedient. It is on substantially this principle that the system of freight classification common in American railroads is based, and has been approved by the regulating authorities. The principle of cost is not entirely ignored in freight classification, for the latter does rest partly on differences in cost of handling, but these differences alone do not furnish a sufficient basis to enable all freight to move easily. The Missouri Public Service Commission has analyzed the factors to be considered in fixing a freight rate as follows:[2] value of service, value of commodity, liability to damage in transit, weight of commodity per cubic foot of space occupied, package conditions permitting other commodities to load with such commodity, liability of commodity to damage other commodities in transit, competition to the specific market or markets with the same or competitive commodities from other sources of supply. These factors, with the possible exception of the last, fall naturally under the general principles of cost of service and value of service. The Interstate Commerce Commission has considered in some detail the whole question of low rating of low-class commodities. Its opinion was delivered in the case of Colorado Fuel & Iron Co. *v.* Southern Pacific Railway, wherein which it spoke as follows:

[1] P. U. R. 1915 B, 367.

[2] *In re* A. T. & S. F. Ry. p. 537, n. 2, Co., *supra*. See also a similar analysis by the W. Va. Commission in Greer *v.* B. & O. Ry. Co., P. U. R. 1916 D. 286.

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The general comparatively low rating [of low-class commodities] . . is largely due to the character of such commodities, the use to which they are put, the demand for them in large quantities throughout the country, their susceptibility of movement at less cost and risk to the carrier than high-class and more valuable freight, and other like conditions. It is to the interest of the carriers as well as the public that their rates be low enough, if not below a remunerative point, to permit the general movement and distribution of these commodities in general demand in large quantities for construction, building, manufacturing, and other purposes. Reasonable freedom of such movement and distribution stimulates the growth and development of the country and thereby promotes all interests.[1]

It is to be noted in this opinion that the reservation is made that the rates must not be so low as to be unremunerative, and on the other hand, as Beale and Wyman point out, "Just because high-grade commodities will stand a rate relatively very much higher, it is not justifiable to charge them outrageously disproportionate rates."[2] Notwithstanding these limitations however, the cases show that the regulating authorities clearly recognize the social interests involved, and that in order to further those interests they depart from the full application of the cost principle and rely upon value of service.

A consideration of the various questions which have been presented permits of certain generalizations. It has been shown that the program of rate regulation to which the United States has committed itself in dealing with its public utilities is based upon two principles—the cost of service and the value of service—and that in applying these principles the effect of a given rate upon the social welfare is one of the factors to be considered.

While the courts have been free to recognize this, the application of this factor has been limited by the protections to property afforded by our Constitution. Unfortunately, the regulating authorities have been still further restricted in their efforts to promote the social welfare by the recent decision of the Supreme Court which decrees that every rate of the schedule shall provide a fair return. Nevertheless there is still some room for rates to

[1] (1895) 6 I. C. C. Rep., 489.

[2] *Op. cit.*, section 544.

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be fixed with a view to social betterment. The principle of cost of service, to which the courts seem inclined to adhere more and more closely, has permitted relatively low commutation and school rates tending to the relief of urban congestion and to the encouragement of education. The same principle, if applied to terminal costs, as seems not unlikely, will assist in preventing the piling up of business in the great congested cities, thereby tending to relieve the many unfavorable conditions that come with overcrowding. No basis has been found, however, for raising the standards of living of a community by fixing rates encouraging the use of gas, water, electricity and other services by small consumers. The cost-of-service principle, as at present applied by the regulating authorities, is distinctly favorable to the large user; but the small user may be protected from actual discrimination. It is to be regretted that the possibilities of raising the living standards of persons of slender means is being thus curtailed. Finally, a basis for promoting the general development of business and the prosperity of the nation has been found by an adjustment of freight schedules which, based on a combination of cost and value of service, permits a classification of rates in proportion to ability of the shipper to pay.

It is apparent, therefore, that there is opportunity for the promotion of the social welfare under American rate regulation. It is also evident, however, that the opportunity is a limited one, and that the bias of our law in favor of propertied interests makes any radically constructive action in this direction impossible. Under the regulation program we cannot look forward to any such wide application of the principle of social welfare in rate making as is claimed to have been attained by the government-owned public utilities of Europe. With the general tendency of the courts at the present time to narrow themselves to the cost-of-service theory, moreover, it seems likely that rate fixing will give less attention, rather than more, to social welfare, and will tend to become more an arithmetical determination of value and proportionate returns.

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THE WORKMEN'S COMPENSATION CASES

IN 1911 the court of appeals of New York in the case o Ives *v.* South Buffalo Ry. Co.[1] declared invalid the work men's compensation statute of that state. The basic doc trine of the decision was that it is a deprivation of propert without due process of law to require an employer to mak compensation to employees for injuries arising in the course o employment, unless the injuries in question are due to som negligence imputable to the employer. According to the hea note the case held that "no employer can be compelled to as sume a risk which is inseparable from the work of the em ployee, and which may exist in spite of a degree of care b the employer far greater than may be exacted by the mos drastic law."

The judicial declaration of this doctrine made it apparer that, whatever view might be taken by courts of other state no workmen's compensation statute could have a firm place i our legal system until it had been passed upon by the Suprem Court of the United States. If that court should approve c the principles announced in the unanimous decision of the Ne York court, it would be necessary to amend the federal Const tution before any state could substitute the scheme of work men's compensation for the existing common law. Not unt 1916 was the question squarely presented to the Suprem Court. Another year passed before the decision was rendered In three cases decided on March 6, 1917, two of the statute before the court were unanimously sustained[3] and the thir was held valid by a vote of five to four.[4] Aside from th

[1] 201 N. Y. 271.

[2] The three cases which involved the question were first argued in February an March, 1916. They were restored to the docket for re-argument November 1 1916, and re-argued in the following December, January and February.

[3] New York Central Railroad Co. *v.* White, 243 U. S. 188; Hawkins *v.* Bleakl 243 U. S. 210.

[4] Mountain Timber Co. *v.* Washington, 243 U. S. 219.

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practical importance of the actual decisions, the reasoning on which they have been based invites consideration and analysis as an aid to a better understanding of the judicial concept of "due process of law."

I

The exact grounds of the decision of the New York court of appeals in the Ives case are not easy to find.[1] The statute is said to be "plainly revolutionary" when "judged by our common law standards." Yet this alone cannot be enough to render it unconstitutional, for it is recognized that "the statutory modifications of the 'fellow-servant' rule and the law of 'contributory negligence' are clearly within the legislative power." Of these common-law rules it is said: "These doctrines, for they are nothing more, may be regulated or even abolished." Earlier in the opinion, the fellow-servant rule is called "one of judicial origin engrafted upon the common law." Thus the fellow-servant rule and the doctrine of contributory negligence are differentiated from the common-law rule that liability must be conditioned on fault. The implication is that this latter rule is not one of judicial origin, is not a mere doctrine.

Manifestly the various common-law rules do not differ in their origin. And the criteria by which we may differentiate those common-law rules which are mere doctrines from those which are something else is nowhere stated. But in suggesting a definition of due process of law the opinion says that this "is but another way of saying that every man's right to life, liberty and property is to be disposed of in accordance with those ancient and fundamental principles which were in existence when

[1] The opinion of the court, per Werner, J., does not pass judgment on the propriety of depriving the employer of a jury trial in determining the question of liability and fixing the amount of compensation, for the reason that the court was divided on the point. Yet in discussing an "admission" of the proposers of the act that the legislature could not take from an injured employee his legal right of action, it is asked: "By what measure of power or justice may the legislature assume to take from the employer the right to have his liability determined in an action at law?" A concurring opinion by Cullen, C. J., concurred in by Willard Bartlett, J., makes no mention of the deprivation of jury trial. Evidently five of the judges believed that it was unconstitutional to remove the determination of liability from the sphere of judicial controversy, and two were of the contrary opinion.

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our constitutions were adopted." Later it is observed that unde our governmental system "courts are not permitted to forge that the law is the only chart by which the ship of state is to b guided." And "law as used in this sense" is said to mea "the basic law and not the very act of legislation which deprive the citizen of his rights, privileges and property." Elsewher there are references to the "fundamental law" and the "funda mental idea of property." It is evident that the New York cou regarded some of our common-law rules as fundamental an some as nothing more than doctrines. Since the line whic separates these two classes of common-law rules cannot be on which concerns their origin or their sanction, we must look fur ther to discover why the rule that negligence must precede lia bility belongs in the class of those which are fundamental.

It is on this crucial question that the opinion in the Ive case is most disappointing. And this is the question on whic the decision turns. The common-law rule which the statut repeals can hardly be regarded by the court as necessarily th wisest rule, for the opinion says:

> The argument that the risk to an employee should be borne by th employer because it is inherent in the employment may be economi cally sound, but it is at war with the legal principle that no employe can be compelled to assume a risk which is inseparable from the wor of the employee.

This is to say that the statutory rule may be better than th common-law rule, but it is in conflict with it. But the cour concedes that other legislation which abrogates the commo law is entirely proper. The "economic and sociological argu ments" advanced in support of the statute are recognized a "cogent," but the court says that they cannot be "allowed t subvert the fundamental idea of property."

> The right of property rests not upon philosophical or scientific specu ations nor upon the commendable impulses of benevolence or charity nor yet upon the dictates of natural justice. That right has its founda tion in the fundamental law. That can be changed by the people, no by the legislatures.

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Whether the "fundamental law" to which the court here refers is the fundamental rules of common law, or is the constitution, is not wholly clear. It would seem hardly necessary to remind us that the legislature cannot change the constitution. The more natural interpretation of the quotation is, therefore, that it means that the fundamental common-law rules of property are included in the constitutional concept of due process of law, and so cannot be altered except by modifying that concept through amendment to the constitution. But this leaves still unsolved the problem of distinguishing between those common-law rules which are part of the fundamental idea of property and those which are not.

The opinion contains no criticism of any particular features of the statute under review except its main purpose and effect of imposing liability without fault. This result is said to be the giving of a remedy where there has been no wrong. "In its final and simple analysis" what the statute accomplishes is "taking the property of A and giving it to B, and that cannot be done under our constitutions." Illustrations adduced to establish that the common law and approved statutes furnish examples of absolute liability are differentiated on the ground that they do not involve the rights of persons in contractual relations with one another.[1] This distinction would of course be sufficient if the case at bar arose at common law. But for the purpose in hand, it merely substantiates the earlier statement that the statute judged by common-law standards is revolutionary. It does not tell us why the revolution is so serious as to be a deprivation of property without due process. The opinion makes clear that serious changes in important rules of common law are deprivations of property without due process, but its application of the doctrine to the case at bar seems to consist

[1] The illustrations of absolute liability referred to in the opinion do not include the common-law liability of the carrier and the inn-keeper as insurers of goods entrusted to their care against all loss except that occasioned by the act of God and the public enemy. These instances cannot be dismissed on the ground that the persons in whose favor the liability runs had no option to avoid the possibility of loss, as is the case with the landowner who complains of injury from acts done on the premises of his neighbor.

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mainly in asserting that the rule of common law involved *is* important and fundamental and *is* seriously changed.

This dearth of argument on the crucial question is the more puzzling because the court seems inclined to the view that the rule promulgated by the statute is a more desirable one than that developed by the common law. There is also a gap in the reasoning of the opinion on the question whether the statute can be justified as an exercise of the police power. Apparently the court deems it logically unnecessary to entertain this question. It does so, however, as a matter of courtesy towards those who favor the legislation.

> If we are warranted in concluding that the new statute violates private right by taking the property of one and giving it to another without due process of law, that is really the end of the case. But the auspices under which this legislation was enacted, no less than its intrinsic importance, entitle its advocates to the consideration of every argument in its support, and we, therefore, take up the discussion of the police power under which this law is sought to be justified.

"In order to sustain legislation under the police power," says the opinion, "the courts must be able to see that its operation tends in some degree to prevent some offense or evil, or to preserve public health, morals, safety and welfare." Then, after analyzing the statute, it adds:

> It does nothing to conserve the health, safety or morals of the employees, and it imposes upon the employer no new or affirmative duties or responsibilities in the conduct of his business. Its sole purpose is to make him liable for injuries which may be sustained wholly without his fault, and solely through the fault of the employee, except where the latter fault is such as to constitute serious and wilful misconduct.

Thus the answer relates only to health, morals and safety, and does not touch the questions propounded as to public welfare, and the prevention of some offense or evil.

Since the court found the statute a violation of the state constitution, it was of course not necessary to pass upon its validity under the United States Constitution. But the opinion states that the statute is challenged under both constitutions and af-

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firms that "it plainly constitutes a deprivation of liberty and property under the federal and state constitutions, unless its imposition can be justified under the police power." This possible justification for the statute is then rejected. From this it would be inferred that the court passed upon the federal as well as the state question. But at the close of the opinion, after declaring that the compensation statute was not one of "regulation" and therefore was not sanctioned by decisions of the Supreme Court sustaining statutes requiring banks to contribute to a depositors' guarantee fund, it was observed:

As to the cases of *Noble State Bank v. Haskell* (219 U. S. 104) and *Assaria State Bank v. Dolley*, (219 U. S. 121) we have only to say that if they go so far as to hold that any law, whatever its effect, may be upheld because by the "prevailing morality" or the "strong and preponderant opinion" it is deemed "to be greatly and immediately necessary to the public welfare," we cannot recognize them as controlling of our construction of our own Constitution. . . . How far these late decisions of the Federal Supreme Court are to be regarded as committing that tribunal to the doctrine that any citizen may be deprived of his private property for the public welfare we are not prepared to decide. All that it is necessary to affirm in the case before us is that in our view of the Constitution of our state, the liability sought to be imposed upon the employers enumerated in the statute before us is a taking of property without due process of law, and the statute is therefore void.

This seems to be a declination to pass upon the federal question. Yet the unmistakable inference from the opinion as a whole is that the New York court was fully persuaded that it was a denial of due process, in whatever constitution the words are contained, to compel an employer to pay for injuries not caused by his fault.[1]

[1] From a strictly legal point of view the words "due process of law" must have the same meaning in the federal as in the state constitution. There are, however, good common-sense reasons which favor a more liberal interpretation of the federal, than of the state constitution. In invalidating a statute under the state constitution, the court merely compels a resort to the state electorate to amend the state constitution. It says, in effect, that the statute in question is such a marked change in the existing legal system, that it ought not to be put into effect by the votes of majorities

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II

The decision in the Ives case aroused considerable publi criticism, which resulted in an amendment to the New York con stitution designed for the express purpose of sanctioning work men's compensation legislation.[1] Following this amendment the legislature passed another workmen's compensation law which came before the court of appeals in Matter of Jensen v. Southern Pacific Co.[2] The statute was sustained under th federal Constitution by an undivided court. Judge Werner who wrote the opinion in the Ives case, did not sit in the Jen sen case, but he concurred in another case decided the sam day which applied the new compensation law.[3] Of the othe judges who participated in the Ives decision, only Judge Collin and Judge (now Chief Judge) Willard Bartlett were on th bench when the Jensen case was decided.

Judge Miller, who wrote the opinion in the Jensen case, sai that the Ives decision did not require the court to hold the new compensation act invalid under the Fourteenth Amendment because the old and the new statutes "are essentially and fun damentally different." Both, however, made the employe liable without fault and denied him a jury trial to decide th question of his liability and the amount of compensation. Th new act did precisely what the court had said could not be don consistently with due process of law. The features of the forme statute relied on in the Jensen case to avoid the precedent o

in both houses of the legislature and the approval of the governor. The court is a instrument by which appeals are taken from representative government to the town meeting form of democratic government. Quite different is the effect of a decisio holding that state legislation is forbidden by the federal Constitution, for then th appeal must be taken to Congress and the legislatures of three-fourths of the forty eight states.

[1] The important language of the amendment is: "Nothing contained in this con stitution shall be construed to limit the power of the legislature to enact laws for th protection of the lives, health or safety of employees; or for the payment, either b employers or by employers and employees, or otherwise, either directly or throug a state or other system of insurance or otherwise, of compensation for injuries t employees or for death of employees resulting from such injuries without regard t fault as a cause thereof."

[2] (1915) 215 N. Y. 514.

[3] Matter of Walker v. Clyde Steamship Co., 215 N. Y. 529.

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the Ives case were not criticized in the opinions in that case. The chief difference between the two statutes was that the first left the employee the option of suing at common law or seeking compensation under the statute, while the second makes the statutory relief of the employee exclusive unless the employer fails to secure the payment of the compensation required by the act.

This difference is perhaps sufficient to justify a difference of decision, but nevertheless the spirit of the opinion in the Jensen case is utterly opposed to that of the opinion in the Ives case. The court had changed its attitude. Judge Miller says: "We should consider practical experience as well as theory in deciding whether a given plan in fact constitutes a taking of property in violation of the Constitution." "Any plan devised by the wit of man may in exceptional cases work unjustly, but the act is to be judged by its general plan and scope and the general good to be promoted by it." "This subject should be viewed in the light of modern conditions, not those under which the common-law doctrines were developed." Such statements furnish fairly safe grounds for inferring that the statute involved in the Jensen case would have been sustained had it been identical with that declared unconstitutional in the Ives case. The transition to the changed viewpoint was a little the easier because the second statute was less harsh on employers than was the first. But it is quite apparent that after the amendment to the state constitution the court looked with new glasses at the concept of due process of law.

For the decision of the Jensen case, however, it was unnecessary either to overrule or to distinguish the Ives case. That case was a square decision with respect only to the meaning of the state constitution, of which the highest state court was the final interpreter. The issue in the Jensen case involved the meaning, not of the state, but of the federal Constitution. On such questions the state courts are not the final arbiters.[1] As

[1] Prior to 1914 a state decision declaring a state statute invalid under the federal Constitution could not be reviewed by the United States Supreme Court. Section 237 of the Judicial Code limited the appellate jurisdiction of the Supreme Court over state decisions involving the constitutionality of state statutes under the federal Con-

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the opinion in the Jensen case points out, "upon the question whether the act offends the Constitution of the United States the decisions of the United States Supreme Court are controlling." And it is primarily on the basis of Noble State Bank *v* Haskell,[1] that the compensation statute is sustained. Reliance on this Supreme Court decision, however, is a departure from the reasoning of the opinion in the Ives case, which insisted that the depositors' guarantee act was a law of "regulation" while the workmen's compensation act was not.

Judge Miller holds that, except for the effect of the compensation act on the employee, the Noble State Bank case is decisive of the question of its validity. "A compulsory scheme of insurance to secure injured workmen in hazardous employments and their dependents from becoming objects of charity certainly promotes the public welfare as directly as does the insurance of bank depositors from loss." And the balance of burden on employers and resulting benefit to them is more favorable to the employers than is the analogous balance of burden and benefit to the banks.

Solvent banks were thus required to pay money into a fund for the direct benefit of others, the banks benefiting only indirectly from the supposed benefit to commerce and the greater stability of banking. In this case the mutual benefits are direct. Granted, that employers are compelled to insure and that there is in that sense a taking. They insure themselves and their employees from loss, not others. The pay-

stitution to cases where the state decision was in favor of the validity of the statute. The theory on which the right of review was thus limited was that if the state statute was declared invalid, the one who had claimed a right under the federal Constitution had had that right sustained by the state court and there was therefore no reason to resort to the federal courts. This theory neglected to take account of the fact that the litigant who relied on the statute and the public of the state were as much interested in the constitutional question as was the litigant who contested the validity of the statute. By the Act of December 23, 1914, ch. 2 (38 Stat. L. 790), section 237 of the Judicial Code was amended so as to permit the Supreme Court "to require, by certiorari or otherwise," any case in which is drawn in question the validity of a state statute under the federal Constitution "to be certified to the Supreme Court for its review and determination . . . although the decision in such case may have been . . . against the validity of the state statute" claimed to be repugnant to the federal Constitution.

[1] (1911) 219 U. S. 104.

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nent of the required premiums exempts them from further liability. The theoretical taking no doubt disappears in practical experience. As a matter of fact every industrial concern, except the very large ones who insure themselves, have for some time been forced by conditions, not by law, to carry accident indemnity insurance. A relatively small part of the sums thus paid actually reached injured workmen or their dependents. With the economic saving of the present scheme, insurance in the long run should certainly be as cheap as under the old wasteful plan, and the families of all injured workmen, not a part only, will receive some compensation for the loss of earning power of the wage earner.

The difficulty which the workmen's compensation statute raises with respect to employees arises from the fact that it cuts off the common-law right of action for injuries caused by negligence. This was the difficulty which caused the commissioners who framed the first statute to make it optional as to employees.[1] This loss of the common-law right of action Judge Miller calls the employee's "contribution to an insurance scheme designed for his benefit" which "may be justified on precisely the same grounds as the contribution exacted of the employer has been."

When he enters into the contract of employment, he is now assured of a definite compensation for an accidental injury occurring with or without fault imputable to the employer and is afforded a remedy, which is prompt, certain and inexpensive. In return for those benefits he is required to give up the doubtful privilege of having a jury assess his damages, a considerable part of which, if recovered at all after long delay, must go to pay expenses and lawyers' fees.[2]

[1] The contention that workmen's compensation statutes deprive employers and employees of the constitutional right to a jury trial was disposed of by the Washington supreme court in State *ex rel.* Davis-Smith Co. *v.* Clausen (65 Wash. 156) by saying that the right to trial by jury is only for causes of action recognized by the law. The right to trial by jury is incident to the right of action, and the constitutional provision requiring a jury trial does not prohibit the legislature from defining what shall constitute a cause of action. In considering the same objection, the Montana supreme court said in Cunningham *v.* North Western Improvement Co. (44 Mont. 180): "We find nothing in the constitution to indicate that it is incumbent upon the legislature to preserve the present system of actions for negligence so as to cover future happenings."

[2] Judge Miller suggests further that if at common law the employee assumes the risk of a fellow-servant's negligence and the risk of negligence imputable to the

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There will of course be accidents occasioned by the negligence of employers, for which the injured workmen could recover more at common law than under the statute. As Judge Miller points out, though the employee is not deprived of all remedy for an injury which would be actionable at common law, under the statutory remedy "the compensation or recovery is limited, and that in a sense may constitute a taking." The significant feature of the reasoning in answer to this consideration is that it regards the employees as a class, and looks at the benefit which the class as a whole will derive from the statute rather than at possible disadvantages which will accrue to the few who might otherwise win large verdicts at the hands of a jury. Judge Miller regards the statute from the standpoint of its general operation and effect, rather than from that of the most grievous deprivation it may occasion in a few isolated instances. After calling it fundamentally fair, he says: "Of course, I do not speak of details, which may or may not be open to criticism, but which, granting the validity of the underlying principle, are plainly within the province of the legislature." This is the same canon of judgment which Mr. Justice Holmes applied when he said of possible ill results of a statute: "Now and then an extraordinary case may turn up, but constitutional law, like other mortal contrivances, has to take some chances, and in the great majority of instances, no doubt, justice will be done."[1]

The opinion in the Jensen case might for the most part have been a dissenting opinion in the Ives case. The economic and sociological arguments which the Ives opinion called cogent but dismissed as immaterial are the basis of the reasoning in the Jensen opinion. The disadvantages of the common-law rules were contrasted with the advantages of their statutory substitutes. It was not by the use of such terms as "basic"

master where the danger is obvious, it would not be a great extension "for the legislature to provide that the employee should assume the risk of all accidental injuries." "And if that can be done," he adds, "it is certainly competent for the legislature to provide by the creation of an insurance fund for a limited compensation to the employee for all accidental injuries, regardless of whether there was a right of action for them at common law." This argument goes far towards allowing the legislature free rein in abolishing rights of action given by the common law.

[1] Blinn *v.* Nelson (1911) 222 U. S. 1, at p. 7.

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nd "fundamental" on the one hand and "revolutionary" on ıe other that a solution was reached. The test of due process 'as a test of practical consequences. The grounds of the de- ision can be found from reading the opinion. So different re the methods of reasoning employed from those in the Ives pinion that a detailed comparison of the two opinions is im- ossible. One is devoted largely to stating standards which it oes not specifically apply, and the other to applying standards 'hich it does not specifically state. In spite of the Hibernicism 'e are warranted in saying that the Jensen opinion recognizes oth the absence of a standard and the considerations which hould govern its application. "Fortunately," says Judge Iiller, "the courts have not attempted to define the limits of ıe police power. Its elasticity makes progress possible under written constitution guaranteeing individual rights." And ıen he indicates the way of reaching conclusions and states ıe conclusion he has reached: "The question is often one of egree. The act before us seems to be fundamentally fair to oth employer and employee."

III

The New York statute came before the Supreme Court of ıe United States in New York Central Railroad Co. *v.* White,[1] nd was sustained without dissent. On the same day the court pproved of the Iowa compensation statute in Hawkins *v.* leakly.[2] The opinions in both cases were by Mr. Justice itney. The opinion in the Iowa case deals with minor con-

[1] 243 U. S. 188. In the same case in the New York court of appeals (216 N. Y. 53) no opinion was rendered. The statute was sustained on the authority of the nsen case *cit. sup.*, p. 548, n. 2. The Jensen case also went up to the Supreme ourt of the United States and was there reversed on the ground that the statute, ough constitutional, was not applicable to employees who by reason of the nature their employment were within the admiralty jurisdiction of the federal courts (244 . S. 205). The practical effect of this decision was overcome by an Act of Con- ess (October 6, 1917, Public, no. 82, Sixty-fifth Congress) which amended sections 4 and 256 of the Judicial Code, adding to the clauses giving the federal courts juris- ction of all civil cases of admiralty and maritime jurisdiction, and making that risdiction exclusive of the courts of the states, an exception which saves "to claim- nts the rights and remedies under the workmen's compensation law of any state."

[2] 243 U. S. 210.

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tentions based on peculiar provisions of the Iowa statute.[1] Th major issues are considered in the New York case.

The opponents of the statute urged that it "strikes at th fundamentals of constitutional freedom of contract," and re minded the court of some of its previous declarations couche in general terms. Mr. Justice Pitney made answer that it wa not the purpose of the court to qualify or weaken these dec larations. "We recognize," he said, "that the statute unde review does measurably limit the freedom of employer and em ployee" and that "it cannot be supported except on the groun that it is a reasonable exercise of the police power." Suc general statements about the right of property and of contrac which appear in many judicial opinions are merely an em broidered way of referring to the constitutional provision against taking liberty or property. They are but half truths i they omit reference to the qualifying clause "without due pro cess of law." They are preambulary merely and not part o the reasoning on which the decisions are based.[2] In the brief

[1] The Iowa statute provides for an elective compensation law. If the employe does not accept the act, he loses his common-law defenses of assumption of risk contributory negligence and the benefit of the fellow-servant rule, and he is compelle to establish affirmatively that the injury was not the result of his negligence. "Thi is the result whether the employee on his part accepts or rejects the act. But wher the employee rejects it and the employer accepts it," then the employer when sue may plead and rely on all his common-law defenses. The statute further provide that where an employee elects to reject the act, he must file an affidavit stating who if anybody, requested or suggested that he should do so. If it appears that the em ployer or his agent made such suggestion, the employee shall be conclusively pre sumed to have been unduly influenced, and his rejection of the act is void. Thes various provisions, it was contended, bear more harshly on employers than on em ployees and therefore deny employers the equal protection of the laws. But th court answered that the power of the state over presumptions and over the employer' common-law defenses was sufficient to warrant these changes of the common la quite apart from their inclusion in the compensation act as inducements on employer to accept. They are therefore proper when the "power has been qualifiedly exer cised, without unreasonable discrimination."

[2] "We get no accurate idea of its [the police power's] limitations by opposing t it the declarations of the Fourteenth Amendment. . . . A stricter inquiry is neces sary, and we must consider what it is of life, liberty and property that the Constitu tion protects. . . . We know that it is of the essence of liberty—indeed, we ma say, of life—that there shall be freedom of contract, and yet there may be limitation upon such freedom. We know that in the concept of property there are the right

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of counsel they give fervor to argument, rather than light. Mr. Justice Pitney paused but a moment to dismiss them before turning to the vital issue in the case.

He finds the compensation statute an exercise of the police power because "the subject matter in respect of which freedom of contract is restricted is the matter of compensation for human life or limb lost or disability incurred in the course of hazardous employment, and the public has a direct interest in this as affecting the common welfare." Quoting from Holden *v.* Hardy,[1] he adds: "The whole is no greater than the sum of all the parts, and when the individual health, safety, and welfare are sacrificed or neglected, the state must suffer." He meets the argument which prevailed in the Ives case to the effect that the statute was not a "regulation," because it imposed no rule of conduct upon the employer with respect to the conditions in his factory, by saying:

> This statute does not concern itself with measures of prevention, which presumably are embraced in other laws. But the interest of the public is not confined to these. One of the grounds of its concern with the continued life and earning power of the individual is its interest in the prevention of pauperism, with its concomitants of vice and crime. And, in our opinion, laws regulating the responsibility of employers for the injury or death of employees, arising out of the employment, bear so close a relation to the protection of the lives and safety of those concerned that they properly may be regarded as coming within the category of police regulations.

This reference to the police power is made towards the close of the opinion, seemingly by way of rebuttal to the argument for the employer. If the statute could be justified only as an exercise of the police power, it would seem that the question whether its purpose was public must be the primary one in the

of its acquisition, disposition and enjoyment—in a word, dominion over it. Yet all of these rights may be regulated. Such are the declarations of the cases, become latitudes by frequent repetition and many instances of application." Mr. Justice McKenna, in Hall *v.* Geiger-Jones Co. (1917) 242 U. S. 539, at pp. 548–549.

[1] (1898) 169 U. S. 366, at p. 397. The words referred to in Mr. Justice Brown's opinion in Holden *v.* Hardy were contained in quotation marks, but no reference was given.

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case. But Mr. Justice Pitney does not mention it until after he has shown that the statute is due process because it affords a legitimate substitute for the rules of common law, taking away some burdens and imposing others in their place. This order of treatment suggests that statutes which can be regarded as in the nature of amendments of the rules of common law might be sustained even though they did not fall within recognized heads of the police power. The suggestion may be a fanciful one, but it finds some support in the fact that a considerable part of Mr. Justice Pitney's opinion is directed to comparing the statute with the common-law rules which it supersedes.

It is made clear that the court is sustaining simply the particular statute before it and is not passing judgment on other legislative measures which alarmists might suggest as impliedly sanctioned if the compensation law is allowed to stand.[1] "It perhaps may be doubted," says the learned justice, "whether the state could abolish all rights of action, on the one hand, or all defenses, on the other, without setting up something adequate in their stead." The doubt indicates a different attitude from that of Judge Miller in his suggestion that the employee cannot complain of the loss of his common-law remedy because the state might have required him to assume all the risks of the employment.[2] "No such question," says Mr. Justice Pitney "is here presented, and we indicate no opinion upon it. The statute under consideration sets aside one body of rules only to establish another system in its place."

Then follows a comparison between the old and the new rules. The employer loses his "defense respecting the question of fault," and "is assured that the recovery is limited, and that it goes directly to the relief of the designated beneficiary." The employee loses his chance to "recover as much as before in case of being injured through the employer's negligence" and becomes "entitled to moderate compensation in all cases of injury, and has a certain and speedy remedy without the difficulty and expense of establishing negligence or proving the

[1] For an instance of the argument from apprehension, see n. 1, p. 568 *infra*.

[2] See n. 2, p. 551, *supra*.

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amount of his damages." Where before he assumed "the entire consequences of all ordinary risks of the occupation," he now "assumes the consequences, in excess of the scheduled compensation, of risks ordinary and extraordinary." Each gains something for his losses and loses something for his gains. "The act is evidently intended as a just settlement of a difficult problem, affecting one of the most important of social relations, and it is to be judged in its entirety."

One of the considerations just touched upon deserves elaboration. It is counted as one of the gains of the employer that the amounts paid go "directly to the relief of the designated beneficiary." The circumstances attending the lives of his laboring force are matters of selfish concern to the employer. Enlightened employers have not waited to learn this from the Supreme Court. The continuity of their labor force is favored by speedy payments which promote rapid recovery of those who are injured. A cause of ill-feeling is removed when liability for injuries and the amount of compensation are determined by automatic adjustment rather than by litigious wrangle.

Of doubtful validity is the suggestion made in the opinion that "as the employee's assumption of ordinary risks at common law presumably was taken into account in fixing the rate of wages, so the fixed responsibility of the employer, and the modified assumption of risk by the employee under the new system, presumably will be reflected in the wage scale." The assumption that wages are higher in proportion to occupational hazard has long been disproved by the facts.[1] Steeple jacks get high wages because the risk is notorious, and few there be who enter the employment, but miners and railway trainmen are not similarly favored.

The major contention urged in opposition to the statute was of course the complaint that it imposes liability where there is no fault. The specific consideration of this objection was prefaced by the statement that "no person has a vested interest in any rule of law, entitling him to insist that it shall remain unchanged for his benefit." It was then pointed out that "lia-

[1] Seager, Social Insurance, pp. 56, 57.

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bility without fault is not a novelty in the law." Reference made to the common-law liability of the carrier and the inn keeper, and of those who keep mischievous animals or use fir or other dangerous agencies. The point made in the Ives cas that such liability without fault was imposed in favor of thos who were not in contractual relations with the person mad responsible is not touched upon. With respect to the carrie and the inn-keeper it is not true.

The closest common-law analogy to the compensation sta tutes is found in the maxim of *Respondeat Superior*. The ap plication of this maxim is said to make the employer liabl when he is "entirely blameless," when he has "exercised th utmost human foresight to safeguard the employee." Quotin from Best, C. J., in Hall *v.* Smith,[1] Mr. Justice Pitney says tha the maxim is "bottomed on this principle, that he who expec to derive advantage from an act which is done by another fo him, must answer for any injury which a third person may sus tain from it." The provision for compulsory compensation merely an extension of this doctrine. It "cannot be deeme to be an arbitrary or unreasonable application of the principl so as to amount to a deprivation of the employer's propert without due process of law."

The pecuniary loss resulting from the employee's death or disabl ment must fall somewhere. It results from something done in th course of an operation from which the employer expects to derive profit. In excluding the question of fault as a cause of the injury, th act in effect disregards the proximate cause and looks to one more re mote,—the primary cause as it may be deemed,—and that is, the em ployment itself.

Earlier in the opinion, in considering whether "the new a rangement is arbitrary and unreasonable, from the standpoi of natural justice," Mr. Justice Pitney points out that the phys cal suffering from injuries must be borne by the employe alone. But, besides this, he says, "there is the loss of earnin power—a loss of that which stands to the employee as h capital in trade."

[1] 2 Bing. 156, 130 Eng. Reprint 265.

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This is a loss arising out of the business, and, however it may be charged up, is an expense of the operation, as truly as the cost of repairing broken machinery or any other expense that ordinarily is borne by the employer. Who is to bear the charge? It is plain that, on grounds of natural justice, it is not unreasonable for the state, while relieving the employer from responsibility for damages measured by common-law standards and payable in cases where he or those for whose conduct he is answerable are found to be at fault, to require him to contribute a reasonable amount, and according to a reasonable and definite scale, by way of compensation for the loss of earning power incurred in the common enterprise, irrespective of the question of negligence, instead of leaving the entire loss to rest where it may chance to fall—that is, upon the injured employee or his dependents.

If it is reasonable to make the employer bear a part of this loss as one of the expenses of operation, when his own negligence has not contributed to it, the remaining question is whether the reasonableness vanishes in those cases where the loss is directly traceable to the negligence of the employee. The opinion does not argue the question whether the employer's defenses of contributory negligence can be abolished, for previous decisions had settled that they could. But the significance of the employee's negligence is somewhat different when the employer's negligence is not an essential element in the right to get compensation. In dealing with this consideration, Mr. Justice Pitney calls attention to the circumstances which afforded the opportunity for the employee's negligence and which may have contributed to it, and adds:

> The lawmaker reasonably may have been influenced by the belief that, in modern industry, the utmost diligence in the employer's service is in some degree inconsistent with adequate care on the part of the employee for his own safety; that the more intently he devotes himself to the work, the less he can take precautions for his own safety.

And it is further pointed out that "the consequences of a disabling or fatal injury are precisely the same to the parties immediately affected, and to the community, whether the proximate cause be culpable or innocent." This latter observation must be taken in connection with the point previously made

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that the loss "results from something done in the course of an operation from which the employer expects to derive a profit."

From the foregoing review it is apparent that the reasoning of the opinion consisted almost entirely of the "economic and sociological arguments" which the New York court in the Ives case dismissed as not pertinent to the constitutional issue. To the Supreme Court of the United States, the considerations which determine the meaning of "due process of law" are practical considerations. The court inquires how the statute will work out in practice. It compares the burdens and the benefits and strikes a balance between them. The mere fact that the statute changes the common law is dismissed as immaterial. What is important is the extent of the change and the comparative merits of the statutory rules and those developed at common law. The Supreme Court offers no comfort to those in search of a complete definition of the concept of due process. But it tells us clearly the methods by which the constitutional provision will be applied to specific cases. Not by doctrinaire assertion, but by the formation of practical judgments will it be determined whether statutes are consistent or inconsistent with the requirements of due process. Men may differ as to the wisdom of the specific judgments which the court from time to time may form. But only those who are ignorant that law is an instrument for regulating practical affairs will have anything but praise for the method by which the judgments are reached.

IV

The Washington statute which came before the Supreme Court in Mountain Timber Co. *v.* Washington[1] differed from the New York and Iowa statutes in one important respect. The industries of the state are divided into classes on the basis of their hazardous character. Each employer in each class contributes to the compensation for all injuries in that class, even though no injury occurs in his particular establishment. This is accomplished by compulsory assessments to a state fund.

[1] 243 U. S. 219.

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The rates of assessment vary in the different classes, and provision is made for adjusting the rates and reclassifying the various industries as experience may advise. The statute was sustained by a vote of five to four. Mr. Justice Pitney wrote the opinion. With him concurred Justices Holmes, Day, Brandeis and Clarke. The dissentients were the Chief Justice and Justices McKenna, Van Devanter and McReynolds. There was no dissenting opinion.

The first question considered by Mr. Justice Pitney was "whether the main object of the legislation is, or may reasonably be deemed to be, of general and public moment, rather than of private and particular interest." The affirmative answer was supported by reference to New York Central Ry. Co. *v.* White[1] and by argument in favor of the power of the state to provide pensions to those whom the Washington court called the "soldiers of organized industry." Mr. Justice Pitney referred to the industrial occupations as "so necessary to develop the resources and add to the wealth and prosperity of the state," and said that "a machine as well as a bullet may produce a wound, and the disabling effect may be the same." Direct compensation to employees in industry is by clear implication called as legitimate a public function as is the expenditure of "public moneys to provide hospital treatment, artificial limbs, or other like aid to persons injured in industry, and homes or support for the widows and orphans of those killed."

The difficult question in the case and the one which undoubtedly occasioned the difference of opinion among the judges was whether it was reasonable to impose the cost on employers by the method adopted. The idea that the losses in any given class might be so heavy that the assessments required from that class would leave no sufficient margin for reasonable profits was met with the suggestion that any industry in which the "human wastage" was so great might be prohibited entirely. This is a significant rebuke to one of the arguments by which the old common law of assumption of risks used to be supported—the argument that if employers rather

[1] 243 U. S. 188.

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than employees were compelled to assume the risk, business could not be carried on.[1]

The state court had sustained the charges imposed upon employers as "a license tax upon the occupation, partaking of the dual nature of a tax for revenue and a tax for purposes of regulation." Though the Supreme Court stated that the validity of the statute "depends not upon how it is characterized, but upon its practical operation and effect," it nevertheless referred to the act several times as one imposing an "occupation tax" and apparently did not base its validity solely upon the police power. In deciding whether various classifications have denied the equal protection of the laws, the court has been more tolerant toward classification for purposes of taxation than for purpose of regulation.[2] So it seems quite likely that the Washington compensation statute was more easily sustained because it could be referred in part to the taxing power.

Mr. Justice Pitney suggested no argument in favor of distributing the cost of all accidents in each class among all the members of that class, except the fact that no management, however careful, can afford immunity from the injuries. It

[1] In Dynen *v.* Leach, 26 L. J. n. s. Ex. 221 (1857) Pollock, C. B., said: "A master is not bound to use the safest method. A pair of steps is safer than a ladder, but business could not go on if the ladders were discarded."

[2] In Billings *v.* Illinois, 188 U. S. 97, Mr. Justice McKenna declared: "The taxing power of a state is one of its most extensive powers. It cannot be exercised upon persons grouped according to their complexions. It can be exercised if they are grouped according to their occupations. A state may regulate or suppress combination to restrict the sale of products. The power cannot be exerted to forbid combinations among those who buy products, and permit combinations among those who grow or raise products. Connolly *v.* Union Sewer Pipe Co., 184 U. S. 540. And yet, exercising its taxing power, it has been decided, that a state may make that discrimination. American Sugar Refining Co. *v.* Louisiana, 179 U. S. 89." With the case last cited, compare McFarland *v.* American Sugar Refining Co. (1916) 241 U. S. 79, which declared invalid a police statute. In the Connolly case cited by Mr. Justice McKenna, Mr. Justice Harlan observed: "It is one thing to exert the power of taxation so as to meet the expenses of government, and at the same time, indirectly, to build up or protect particular interests or industries. It is quite a different thing for the state, under its general police power, to enter the domain of trade or commerce, and discriminate against some by declaring that particular classes within its jurisdiction shall be exempt from the operation of a general statute making it criminal to do certain things connected with domestic trade or commerce."

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might well have been pointed out that in practice the burden imposed on employers by the Washington act is not likely to be any more severe than that resulting from the New York statute which the court unanimously sustained. If New York employers do not insure either with private companies or with the state fund, they may be required to deposit with the state Industrial Commission securities of the kind prescribed in the Insurance Law in an amount to be determined by the commission. If New York employers choose to insure, they pay whether they have losses or not. If they do not insure, they undoubtedly suffer some financial loss in buying and setting aside securities of a prescribed kind. In addition they pay the losses occurring in their particular establishments. The risk which they run in being called upon to pay amounts greatly in excess of the insurance premiums which would give them further immunity must itself be deemed a burden on the business. Prudent investors or lenders would be unfavorably affected by the absence of insurance. The well-nigh universal practice of insuring against such losses indicates that business men prefer to pool their risks rather than to bear them individually. The employer in Mountain Timber Co. *v.* Washington was asking constitutional protection of a liberty to run a risk which most business men regard as a liberty to commit folly. His contention may be compared with that urged against Blue-Sky legislation that it shields purchasers "from loss of property by the exercise of their own 'defective judgment,' and puts them as well as the sellers under guardianship." To this suggestion Mr. Justice McKenna replied: "If we may suppose that such purchasers would assert a liberty to form a 'defective judgment,' . . . we must wait until they themselves appear to do so."[1]

Doubtless the reason why Mr. Justice Pitney did not deal in more detail with the employer's objection to compulsory inclusion in a class was that he held that the objection had already been foreclosed by the precedents. The Noble State Bank case,[2] which was not cited in support of the New York or Iowa

[1] Hall *v.* Geiger-Jones Co. (1917) 242 U. S. 539, at p. 554.

[2] Noble State Bank *v.* Haskell (1911) 219 U. S. 104.

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statutes, is here adduced to sustain the statement that "the idea of special excise taxes for regulation and revenue, proportioned to the special injury attributable to the activities taxed, is not novel." Reference is also made to decisions sustaining statutes imposing license fees on automobiles to secure compensation for the use of highways, and imposing taxes on dogs to create a fund for the remuneration of sheep owners for sheep killed by dogs. Such taxes, it is pointed out, have been "imposed on all dog owners, without regard to the question whether their particular dogs are responsible for the loss of sheep."

It is to be regretted that the minority of the court did not indicate the reasons for their dissent. The Chief Justice and Justices McKenna and Van Devanter were on the bench when the Noble State Bank case was decided by an undivided court. They must therefore be deemed to accept that case and to hold that there is some vital distinction between requiring banks to guarantee one another's solvency and requiring employers to share expenses for accidents in one another's plants. It is clear that the analogies between the depositors' guarantee act and the Washington compensation law are far from close.[1] Moreover it was declared in the Noble State Bank case that the state might take "the whole business of banking under its control," and could therefore "go on from regulation to prohibition except upon such conditions as it may prescribe." No such powers obtain with respect to all hazardous industries. The dissenting justices in Mountain Timber Co. *v.* Washington have ample grounds for dismissing Noble State Bank *v.* Haskell as a controlling precedent on the question before them.

[1] It is easier to state the differences and resemblances than to strike the balance between them. Many banks may reasonably expect to continue solvent, while few if any employers may reasonably expect to have no injured employees. Any employer who should have no injured employees would have gained nothing by contributing to a fund from which would be paid his rival's losses, while solvent banks gain something from the general public confidence stimulated by the guarantee of deposits. The assessments collected from the banks are used only when one of the group is insolvent, while those collected from employers are the primary source from which the losses of any one are paid. But this is only to say that the likelihood of need of the assessments is remote in the case of the banks and certain in the case of employers, which in turn is offset by the fact that the employers who pay the assessments are more likely to need and to reap the fruits thereof.

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It is, however, more difficult to reconcile disapproval of the statute of Washington with approval of that of New York. It has already been pointed out that most manufacturers voluntarily pool by insurance the risks of loss by industrial accidents. Granted that an employer can be compelled to pay compensation for accidents in his factory not due to his fault, it is but a slight step further to compel him to join in a co-operative plan for providing payment, so long as the plan corresponds with the business practices followed by sensible men. The theoretical possibility that some few manufacturers might save money by carrying their individual risks seems hardly sufficient to warrant a court in declaring unconstitutional a state plan for workmen's compensation which is otherwise free from flaw.

Had the assessments imposed on manufacturers been levied for the general public treasury rather than for a special fund, there could be but one ground on which to contest the validity of the exaction as an exercise of the general taxing power.[1] It might be held an unreasonable classification to impose heavier assessments on the more hazardous industries than on the more innocuous ones. But this would merely require that the state assess all employers alike on the basis of their pay-roll.[2] The employer with slight prospect of accidents would then pay to the general treasury the same sum as his careless rival employing the same number of men. From the funds thus gathered into the general treasury the state might support those who by reason of industrial accident were incapable of supporting themselves. If it could go a step further and pay compensation for

[1] In Bell's Gap Ry. *v.* Pennsylvania (1889) 134 U. S. 232, Mr. Justice Bradley said: "It [the state] may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness or not allow them." See Southwestern Oil Co. *v.* Texas (1910) 217 U. S. 114, sustaining a special excise tax on wholesale dealers in oil, and Broadnax *v.* Missouri (1911) 219 U. S. 285, sustaining a special excise tax on business exchanges.

[2] It is highly probable that the Supreme Court would allow the state to tax employers on the basis of their pay roll and also to group the various industries according to the extent of hazard they involve and impose higher rates on those that were more dangerous. See the cases cited in note 1 *supra* and also Bradley *v.* Richmond (1913) 227 U. S. 477, and Quong Wing *v.* Kirkendall (1912) 223 U. S. 59.

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all losses occasioned by industrial accidents, whether the losers could otherwise support themselves or not, then the ends sought by the Washington act would be attained. By this method of procedure employers in whose plants accidents are slight and infrequent would be taxed more heavily than under the plan actually adopted by Washington. If all the links in this suggested chain of reasoning will hold, there is no ground left on which those who accept the New York statute can reasonably reject the Washington law.

The questionable link in the argument is the one which infers the power of the state to pay from general funds compensation for all industrial accidents, even to those who are not left entirely dependent on public charity. Would this be a public purpose to which public funds might be devoted? Mr. Justice Pitney gave answer to the very question when he was considering whether the main object of the Washington statute was of general and public moment. After likening the payments to employees under the act to payments for pensions and for other care of the sick and dependent, he continued:

> It is said that the compensation or pension under this law is not confined to those who are left without means of support. This is true. But is the state powerless to succor the wounded, except they be reduced to the last extremity? Is it debarred from compensating an injured man until his own resources are first exhausted? This would be to discriminate against the thrifty and in favor of the improvident. The power of the state is not thus circumscribed by the Fourteenth Amendment.

It may be that this is the point on which the dissenting judges differ from the majority. They did not dissent from the statement in the opinion in New York Central Railway Co. *v.* White to the effect that the "public has a direct interest" in "the matter of compensation for human life or limb lost or disability incurred in the course of hazardous employment . . . as affecting the public welfare." But the New York statute was not treated as an exercise of the taxing power, and the answer to the question whether public moneys may be given to those not entirely destitute is not dependent on the same considera-

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tions that govern the propriety of compelling an employer to compensate his own employees for injuries occurring in connection with the employment. So that the undisclosed basis of the dissent in the Washington case may be the conviction that it is not a proper exercise of the police power to compel an employer to pool his risks from industrial accidents with those of rival enterprisers, and that it is not due process to use the taxing power to relieve the distress of those who have not reached the final point on the road to destitution.[1]

The majority opinion clearly adopts the contrary of both positions. Any difference of attitude on the first must be due to disagreement as to the likelihood that injuries will be fairly evenly distributed among the plants in each class. Mr. Justice Pitney's conclusion that the particular plan of compensation adopted by Washington was within the power of the state was premised on the "fact that accidental injuries are inevitable," which, he said, should be "taken in connection with the impossibility of foreseeing when, or in what particular plant or industry they will occur." An inability to concede this premise is significant only in its bearing on the particular case before the court. It indicates no attitude on any general problem of the meaning of due process of law. If, therefore, the minority dissent on this ground alone, the absence of a dissenting opinion would be of little importance. But the discussion in the majority opinion of the validity of the Washington statute as an exercise of the taxing power is of possible significance for its bearing on the constitutionality of other forms of social legislation. A dissenting opinion might therefore have been of service as a guide to the drafters of such legislation. It might have indicated to some extent the constitutional objections which such measures will do well to avoid in order to meet the approval of an undivided court.

Though regretting that we lack precise knowledge of the difference of opinion among the members of the court, we must recognize the limited function of the reasoning in the majority

[1] For a consideration of opposing views which courts have held on this question, see Goodnow, "The Constitutionality of Old Age Pensions," *American Political Science Review*, vol. 4, p. 194.

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opinion. The question before the court was the constitutionality of the particular statute before it. The "crucial inquiry," as stated in the opinion, was whether the statute "clearly appears to be not a fair and reasonable exertion of governmental power, but so extravagant or arbitrary as to constitute an abuse of power." What is said in the opinion must be understood as directed towards the solution of the particular issue which called for decision. The reasonableness of other statutes than the one before the court cannot be predicated on any general pronouncements abstracted from the opinion in the case. The elements which have to be balanced vary with every statute. To a large degree each statute is in a class by itself. The minority therefore may have been wise in refraining from any expression of views which might have been interpreted more broadly than was legitimate.

Much as we may yearn for the judicial declaration of general tests which would tell us in advance just what exercises of the police power would be valid and what invalid, we must recognize that no such general tests can exist. The Supreme Court has been eminently wise in confining its attention to the precise questions which in each case it is called upon to decide. Other courts have from time to time followed the contrary practice and have declared particular statutes invalid because of a belief that the contrary decision would inevitably sanction general principles under which other statutes however unreasonable and arbitrary must necessarily be sustained. This attitude of mind may very largely explain the decision of the New York court of appeals in the Ives case.[1] The opinions of the Supreme Court, on the other hand, in the cases under review, do not

[1] In the opinion in the Ives case Judge Werner said: "If it is competent to impose upon an employer, who has omitted no legal duty and has committed no legal wrong, a liability based solely upon the legislative fiat that his business is inherently dangerous, it is equally competent to visit upon him a special tax for the support of hospitals and other charitable institutions. . . . Practical and simple illustrations of the extent to which this theory of liability might be carried could be multiplied *ad infinitum*, and many will readily occur to the thoughtful reader. There is, of course, in this country no direct legal authority upon the subject of the liability sought to be imposed by this statute, for the theory is not merely new in our system of jurisprudence, but plainly antagonistic to its basic idea."

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profess to be applying universal and absolute principles. They do not give us an all-inclusive definition of the concept of due process of law. But they establish that the problems which the due-process clause presents will be solved, not by the uncritical and doctrinaire use of such words as "fundamental" and "revolutionary," but by the application of a practical judgment to the concrete subject-matter which each case involves. It may be but a coincidence that this method of determining whether legislation is a proper exercise of the police power is more consistently employed in opinions sustaining statutes than in those declaring them invalid.[1] At any rate it is certain that the methods by which judges reach answers to questions of the police power are in the long run of more importance than the answer that may be given in any particular case. Mr. Justice Pitney's opinion on the constitutionality of workmen's compensation legislation sets an example of judicial reasoning for judges everywhere to emulate.

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[1] Compare, for example, the majority and the minority opinions in Adams *v.* Tanner (1917) 244 U. S., 590, and New York Central Railroad Co. *v.* Winfield (1917) 244 U. S., 157. In this latter case the majority held that the New York Workmen's Compensation statute could not be applied to claims for injuries to employees of interstate carriers occurring when the employee is engaged in interstate commerce, since the Federal Employers' Liability Act was intended to cover the entire field of liability for such injuries and therefore to preclude any state regulation of the same subject matter. The dissenting opinion contains a careful and exhaustive review of the considerations which induced both the Employers' Liability Act and the Workmen's Compensation Act.

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CARLYLE'S CONCEPTION OF HISTORY

IT has become usual to say that Carlyle was less an historian than a prophet or a poet. The justice of this criticism is perhaps most apparent to that large circle who know him by his *French Revolution*, and least apparent to the very much smaller number who know him equally by his *Frederick*. But apart from either of these works we may find scattered through different papers a great deal of important thinking upon what history means, and upon the difficulties which impede its composition. It will be the object of this essay to bring such passages together, and to show how the very remarkable achievements of Carlyle in imaginative reconstruction of the past stand related to the theories about the writing of history which he had deliberately embraced.

I

No one has set forth with greater clearness than Carlyle how the higher historical workmanship differs from the lower. The record of every age is, he tells us, a sort of letter of instruction to the age that comes next, blotted perhaps and torn, but still decipherable and important.[1] There lies the chance for one generation to learn from the mistakes of another, to begin where the other left off. Hence the experience which is best worth recording is that which concerns not the accidental and transient features of a nation's life, but those features that are essential and lasting. The antiquary may interest himself in elements of the past that can never be paralleled; the historian must concentrate on the things which change their form but not their nature, upon the human problems which each age must solve anew, and will solve better by knowing the solutions that have previously failed.

With this principle in mind Carlyle had many a sharp criticism for history as it had been commonly written. Why, for

[1] "On History Again," Misc. iii, 167.

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example, did it lay such exclusive emphasis on political change, not one of the most important but rather one of the least important sides of social action? Why did one hear so much of dynastic ups and downs, of princely misfortunes, of court intrigue and faction fights and pitched battles?[1] However spectacular these may have seemed at the time, especially to the men who were engaged in them, the great mass of the public was little affected. Such things were mere bubbles upon the surface of a great river. Our author cites the history of Scotland as written by Robertson and by Sir Walter Scott. Turning to the former he would seek to know how Scotland came by her industrial and social and religious development.[2] Whence her arts and manufactures, her temples and institutions, in a word her racial character? But Robertson answered no such inquiry. There one was told with infinite detail how Scottish kings had managed to keep themselves alive, how they restrained butcher-barons and ravenous henchmen from utterly extirpating one another, "so that killing went on in some sort of moderation." Coming to that tremendous upheaval, the birth in Scotland of the reformed faith, the thing that Carlyle would know was how this spiritual change diffused itself over the great area of the common people, through what stages it passed, how it came to color the life of herdsman and trader and artisan. Robertson offered instead a mere scandalous chronicle about two persons, "Mary Stuart, a Beauty, but over light-headed, and Henry Darnley, a Booby who had fine legs." The problem of problems, upon which a load of books had been composed, was whether after the ups and downs of a very commonplace courtship it was really true, as alleged, that the beauty blew up the booby with gunpowder, or whether the booby was blown up with gunpowder by someone else.[3] In Carlyle's *Journal* Sir Walter Scott's account of the same momentous time fares no better. "No more a history of Scotland," he exclaims, "than I am Pope of Rome. . . . A series of

[1] "On History," Misc. ii, 91.

[2] "Boswell's Life of Johnson," Misc. iii, 82.

[3] *Ibid.*, p. 83.

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palace intrigues and butcheries and battles, all the while that Scotland, quite unnoticed, is holding on her course in industry in arts, in culture . . . Good heaven! let them fondle, and pout and bicker *ad libitum*; what has God's fair creation and man's immortal destiny to do with them and their trade?"[1]

From the same point of view Carlyle finds that Scott was writing genuine history, not when he supposed himself to be doing so, but when he was professedly writing novels.[2] *Quentin Durward*, a *Kenilworth*, a *Heart of Midlothian* contained just that intimate portraiture of bygone manners which the vacuous *History of Scotland* had left out. Boswell's *Life of Johnson* did not pretend to be a history of eighteenth-century England; but far more was to be learned from it than from twenty histories falsely so called, which told nothing of how man had lived in England at that time, but only how he had been taxed and kept quiet by the powers that ruled him. Court, senate, battlefield must recede into the background, temple, workshop, social hearth must advance into the foreground. More than once Carlyle takes the interesting position that the best picture of a nation's past would be got from an adequate account of its poetry.[4] For in the poet, if he be sincere, the spiritual temper of his age, its interests and convictions, its hopes and fears, must find a voice. He is the exponent of how the world in its deeper aspects appeared from the standpoint of that particular time. No doubt this is a principle which would not bear to be pressed into minute detail; but I think we can see its element of truth if we place side by side the Popes and Goldsmiths of the eighteenth century, the Scotts and Campbells of the early nineteenth, and the Tennysons and Brownings of a generation ago.

Again, Carlyle insists that the historian of the higher type must have a true selective eye. He must be no docile photographer of all things great and small regarding which some

[1] Froude, Carlyle's Early Life, vol. ii, p. 89.

[2] "Sir Walter Scott," Misc. iv, 80 *et seq.*

[3] "Boswell's Life of Johnson," Misc. iii, 80, *et seq.*

[4] "Historic Survey of German Poetry," Misc. ii, 341 *et seq.*

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trace or record has been preserved. Mere memoirs must pass through many a sifting before they are "reduced to history."[1] In *Cromwell* complaint is made about the thirty thousand pamphlets relating to the Civil War which lay unread in the British Museum. In them, says our author, "are things memorable, perhaps at the rate of one pennyweight to a ton;"[2] but no one had gone through them with a genuine historical sense, so that we might have "the metal grains lying here accessible, and the dross heaps lying there avoidable." A needful partner for the faculty of memory is the no less precious faculty of oblivion.[3] And Carlyle does not mean by this simply that the trivial details of a period must be so relegated to the background that the central forces may obtain their perspective. He declares that there are whole tracts of man's past which may be said to have no history, for they had no significance; the historian's imperative function is to suppress them.[4] We are students above all of the ideals and aspirations of mankind; we want to know how these have tried to express themselves, in what degree and mode experience, as it encourages or baffles, has reshaped them down the course of time. And there are stretches in the past during which this movement was not furthered, "decadent ages in which no ideal either grows or blossoms,"[4] times in which men cease to produce, but live like spiritual spendthrifts upon the accumulated capital of the earlier times of enthusiasm. The historian should point out to us which periods these have been, that we may pass quickly over them, and not confuse ourselves by including them in our view.

In one very striking figure Carlyle sums up the whole burden of his contention upon this subject. History, he says, like every other field of labor has its artist and its artisan.[5] The latter is concerned only with some narrow area, like the simple

[1] "Diderot," Misc. iii.

[2] Cromwell's Letters, vol. i, p. 2.

[3] "On History Again," Misc. iii, 173.

[4] *Cf.* Past and Present, p. 241; "Diderot," Misc. iii, 179; also Frederick, book i, p. 8.

[5] "On History," Misc. ii, 90 *et seq.*

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husbandman who tills his own plot, putting in his seed and reaping his harvest by the rules which experience has taught him, with never a thought for the wondrous relation in which his farm stands to the earth below and the firmament above. He "works mechanically in a department, without eye for the whole," and rightly so; for he is a farmer, not a botanist, still less a philosopher or a poet. So the artisan in history confines himself to some special aspect of the past, connecting some event causally with some other event, showing how it was from this or that combination of circumstances that a certain occurrence took place, perhaps even inferring some general property of human nature, and telling us with much show of wisdom—what we scarcely needed to be told—that as often as the same conditions recur the same effect will follow. But a different craftsmanship reveals itself as we take the synthetic rather than the analytic standpoint, the telescopic rather than the microscopic scrutiny, the Platonic rather than the Aristotelian view of human affairs. Rightly considered, no fragment of history can be understood without referring to all the rest; the humblest department is informed with the idea of the whole, and only in the whole is the partial to be truly discerned. We demand from the historical artist not a mere laborious breaking up of bygone centuries into the isolated events, "movements" and what not, that occurred in them and of which they are conceived as a mechanical aggregate. He may do this with preternatural accuracy, but the thing we want done is of a higher type. That step is at best transitional; to accept it as our final satisfaction is like taking the bones and tissues which an anatomist lays upon his table as the constituent elements of life. It is to seek the living among the dead. We must have the past reconstructed for us not merely piece by piece but as a unity. We must somehow be made to realize it as they might have done who moved within it, and had at the same time that discernment of it which belongs only to the view from a distance. Bearing this in mind, one can understand, I think, why Carlyle placed so high an estimate upon the *Waverley Novels*, and, if one were asked which historical work approximates most nearly to such an ideal, perhaps one would mention Carlyle's own

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French Revolution. It is an ambitious program indeed that he has laid down for the artist, and most of our text-books, we must acknowledge, suggest rather the artisan. But our author was well aware of the difficulties, and we may now consider in detail what he judged those difficulties to be.

II

He notes in the first place the suspicious fact that all manner of theorists appeal to history with apparently equal confidence.[1] The skeptic quotes it to demolish what the theologian quotes it to confirm. The Benthamite makes it prove that the rule of conduct has always been utility. The sentimentalist sees in it reiterated evidence that man lives not by his utilities but by his romance, his ideals, his pathetic heroisms. Something must be amiss with a witness whose voice is so ambiguous as to give complete satisfaction to all sides. And the reason is in part this, that it is extremely difficult to make sure of getting before us the uncolored facts about a situation in the past which is being used as a parallel to the situation of the present.

This is not so much because our historical sources are dishonest, as just because they are human, and because no man can make a record even of the events which he has seen without importing something of himself into what he relates. He gives us, not the transaction, but "only some more or less plausible theory of the Transaction."[2] For example, he cannot begin *ab ovo*. He must select some point from which, in his judgment, the significant features of the affair took their rise, some conjuncture at which we must place ourselves in order to get an insight into the real sequence. But it may well be that the roots of the business lay far deeper than our authority had any conception, and that what he takes to be the best vantage ground from which to view it was rather the position from

[1] "On History," Misc. ii, 85. *Cf.* Froude, The Science of History: "In all or any of these views history will stand your friend. History, in its passive irony, will make no objection. Like Jarno in Goethe's novel, it will not condescend to argue with you, and will provide you with abundant illustrations of anything which you may wish to believe." Short Studies, vol. i, p. 1.

[2] "On History," Misc., ii, 88.

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which he accidentally began to be interested when the process was already far advanced. We are told, it may be, of a new "epoch" which started with this or that occurrence, such as Caesar's crossing of the Rubicon, or the French Convocation of Notables, and we are thus led to view one development as terminating and another as opening with some assigned circumstance. But the stream of time is unbroken, and a division of this sort, however convenient, must be more or less arbitrary, very enlightening if the man who made it really saw into the heart of things, very delusive if he saw only his fancies. Moreover the variety of place at which different men ask us to acknowledge a watershed in human affairs is very suggestive that we should distrust them all. Carlyle here remarks with great aptness: "Our clock strikes when there is a change from hour to hour; but no hammer in the Horologe of Time peals through the universe when there is a change from Era to Era." [1]

This difficulty is further illustrated in the *Life of Schiller*. Speaking of historical method, our author points out that the personal convictions of the historian make him choose for special emphasis this or that feature in the age which he depicts, and that no effort to be "impartial" can prevent the perspective of the picture from being thus profoundly disturbed. The total impression becomes quite different as one writer makes central what another makes marginal, and *vice versa*. An ancient Greek or an ancient Roman, looking upon the interests of the state as the only thing that matters, will present the growth of a period very differently from a monkish chronicler of the Middle Age, whose standard of progress is in the number of abbeys founded, and whose test of morals is in liberality towards the clergy.[2] Both again will be in sharp contrast with the present-day historian, who attends less to either state or church than to the advancement of man in freedom, in knowledge, in intellectual and moral stature. Nor can we successfully allow for this by discounting what is called the "personal equation" of the writer upon whom we have to depend. For it is plain that where only a fragment of the total past can be

[1] "On History," Misc., ii, 88.

[2] Life of Schiller, p. 101 *et seq.*

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recorded with any fulness, such diverse interests will make one sort of historian suppress altogether just what another, if he had been there, would have been careful to preserve; and unless we could have in each period an historian of each type our knowledge will be far from well balanced. As a matter of fact the chronicler is, of course, himself a child of his age, and what we really get is history written under a succession of alternating prejudices. The extent to which we must allow for such bias is hard to determine even for the generations that are still near to us in time, and as we go farther back we are reduced to the wildest conjecture. Small wonder then if controversialists on social matters have no doubt that they can meet one another's historical analogies with analogies equally plausible.

The case becomes still worse when we remember that not only *may* the most significant facts of the past be thus relegated to the background, but that there is even a cogent reason why they *must* be so. The events of which record has survived are, in the main, those that made most noise in the world at the time, such as were most violently discussed by the tongue or pen of onlookers and actors.[1] Thus the historical worker who wants to place a period faithfully upon the canvas gives thanks if he can find abundant contemporary speeches, reams of old pamphlets in which the chief arguers confuted one another, or personal letters exchanged between men that were much in the public eye. But the most important processes that are at work in any age rise to the surface only at intervals. It is the relatively trivial happenings which have to keep the memory of themselves alive by ceaseless chatter. Who knows anything, for example, of the gradual steps by which civilization or language was created? Speaking of Diderot, Carlyle remarks that while the *Acts of the Christian Apostles*, on which the world has rested for eighteen hundred years, can be read in one little hour, the *Acts of the French Philosophes*, whose importance is almost spent, lie recorded in whole acres of typography, and would furnish reading for a lifetime.[2] Moreover, if we reflect for a

[1] "On History Again," Misc. iii, 171 *et seq.* *Cf.* "Characteristics."

[2] "Diderot," Misc. iii, 177.

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moment on the events or persons that have lived in history, we can see how often it has been some whimsical accident rather than an enduring weight which has enabled them to keep their place, as Milo of Crotona is remembered by the anecdote about the bullock, and Erostratus of Ephesus by his having set the temple of Artemis on fire on the birthday of Alexander the Great.[1]

Carlyle goes on to point out that though the conditions of *knowing* the past were fully met, an intrinsic impossibility would still prevent us from setting it forth in an adequate picture. Let us suppose, what we know is far from being the case, that the eye-witnesses are unanimous and faithful in their reports. Let us also suppose that they have observed and recorded what were really the more important features. Can we so weave these together as to reconstitute a vanished scene? We are prevented from doing so by the fact that action is *solid* while narrative is *linear*.[2] Just as the thing which science calls "a chain of causes" is not properly a chain, but a superficies, extending in breadth as well as in length, so the acts which history must set forth in succession, as if they were independent of one another—as if they were units to be added up into a mechanical aggregate—are really often simultaneous, mutually interpenetrating, each one affecting and affected by all the rest. To reproduce this intimacy of connexion is not merely an exploit which has so far baffled us; it is one which must baffle us forever. The difficulty is not one of technique, it belongs to the very nature of the historian's enterprise. And so far as he fails to overcome it, what he can give us must remain a mere artificial approximation, often far removed from the living reality with which he would deal.

Finally, Carlyle points out that before history can be philosophized you must have in your mind some general principles which are by no means matter of universal agreement. And however else you may come to agree about these you cannot do so as a fruit of the historical research itself. Do you wish

[1] Sartor, pp. 38–9.

[2] "On History," Misc. ii, 89. *Cf.* "Voltaire," Misc. i, 399.

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to know, for example, whether the past has established any law of human progress? You must first be sure what you mean to look upon as progress and what as merely restless change. Do you ask whether there is evidence of a divine control over human affairs? You must decide whether the control you will call divine is such as will conform to this or to that religious aspiration. Hence Carlyle insists that if we are to have philosophy teaching by experience, not only must the experience be collected, but the philosophy must be in readiness to receive it.[1]

III

Amid such formidable obstacles one wonders that Carlyle himself essayed history at all. Each of the endowments which he has demanded is in itself rare, and their coincidence in one person must surely be unknown. Sometimes he feels this so strongly as to drop into the pessimism of Faust, and would endorse the famous passage:

> Mein Freund, die Zeiten der Vergangenheit
> Sind uns ein Buch mit sieben Siegeln;
> Was ihr den Geist der Zeiten heisst,
> Das ist im Grund der Herren eigner Geist,
> In dem die Zeiten sich bespiegeln.

But again he persuades himself that history has at least a negative value. Like statistics, it is of use "not to get knowledge, but to save yourself from having ignorance foisted upon you."[2] Elsewhere however he is far more sanguine, and his own historical work involves the confident faith that history is heavily charged with general and decipherable truths. Of these I shall have space to look at only two.

(a) Carlyle finds it clearly indicated by the record of the past that the thing upon which social progress depends most of all is the periodic appearance of eminent personalities. He agrees with the common maxim that a great event must have originated in a great cause. So far he is whole-heartedly

[1] "On History," Misc., ii, 85.

[2] "Chartism," Misc. iv, 126.

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Thucydidean, not Herodotean, in his explanations. Where a profound movement appears to have started trivially or accidentally—like the downfall of the Athenian Empire from the Corcyræan quarrel, or the Thirty Years' War from the "three human Projectiles" coming out of a window in Prague—the appearance, he says, is delusive.[1] It gives us only the occasion which precipitated, not the cause which produced. But he goes on to say that by far the greatest of all great causes is the emergence of great men. The age did not make them; they made the age. Social change always finds its real dynamic in a hero, not, as has been so commonly alleged, in a slow accumulation of tendencies penetrating the mass.[2] A Mohammed, a Knox, a Goethe cannot be analyzed into the resultant of current impulses which in each of them were gathered somehow to a center. This has startling consequences. If it be true, then the historians are wrong in their accepted postulate that world changes are never really abrupt, that just in proportion to the extent and depth of a movement it must have begun far back and over an area which is out of sight. But Carlyle was very sure of his own doctrine, and two out of his three great works were conceived on a plan which might illustrate it. All history, he tells us over and over again, should be biographical. Economic forces, mass prejudice, and the like are mere detail; they are marginal, not focal; what really matters is the compelling personality; and where no such personalities are, as he would say, "granted to us by the kind Heavens," there you have a sterile district in human affairs. Thus Cromwell made the English Revolution, and Frederick of Prussia was the key to the middle eighteenth century. The voice that rolled over primeval chaos, "Let there be light," was hardly more decisive, hardly less an outcome of the latent energies in the chaos itself, than the summons that issued from these human oracles. This view, of course, has its obvious consequence in

[1] *Cf.*, *e.g.*, Historical Sketches, p. 159 *et seq.* Contrast the view of that sagacious social philosopher, Lord Monmouth, in Coningsby (viii, 3); "D—n the Reform Bill! If the Duke had not quarrelled with Lord Grey on a Coal Committee, we should never have had the Reform Bill."

[2] *Cf.* Heroes, *passim.*

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Carlyle's contempt of democracy, in his insistence that by some means or other the multitude must place itself under command. As Mr. R. H. Hutton remarks, he incessantly bade us submit ourselves to despotic lord-protectors whom he could not tell us how to find.[1] His point comes out with special clearness when he lays down as the problem of problems for the future just this: "What steps must be taken by a people which believes in the French Revolution, and at the same time believes in Frederick the Great?"[2] Carlyle's view of Frederick is perhaps not ours, but we see what he had in mind. Sham kingship led to disaster under the Bourbons and many others; but only under true kingship can we prosper; hence our question is not how we shall get rid of kings, but how we shall choose them with wisdom and then follow them with submission. Democracy is negative, anarchical; the significance of 1848 was the "tumbling of impostures into the street." The true king, if we can only secure him, rules by right divine.

(b) Again, our author lays it down as an induction of history that the periods of progress have all been periods of *enthusiastic belief*. Church history is, he tells us, the most important research of all—a remark which makes the layman catch his breath, and may make the ecclesiastic rekindle his pride. But Carlyle hastens to say that by church history he does not mean the history of ecclesiasticism. He means by a church that which will be in things spiritual what true kingship is in things temporal, and the actual priestly guidance he condemns as not less defective than the royal. If the thing we want to know is the growth of man's aspirations, we can see these indirectly in the embodiment that they have found for themselves; this is secular history. But if we could write genuine church history we should reach the same thing at first hand, pure, complete; we should know the things which men did truly believe, and in knowing them should have the key to all they did.

What then if there were ages when men believed nothing, ages in which a polite suspense of judgment was erected into a

[1] *Cf.* Hutton's paper on Carlyle, in his Essays.

[2] Frederick, book i, p. 5.

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rule, in which it was forgotten that the healthy state of the soul is to have faith in something, not to debate and argue about everything? The skepticism to which he refers is not merely or chiefly of the theological sort; it is also moral, what Nietzsche called a "disbelief in all value." There have been such times, and Carlyle insists that these have been times of no achievement, times of paralysis, when the wheel of mankind's life was kept going round, but by no means forward. He calls the eighteenth century one of these epochs, when the tree Igdrasil, under which he likes to figure the developing human spirit, has ceased to grow. They are the ages of *persiflage*, of criticism, of refined detachment, to which enthusiasm is matter for contemptuous raising of the eyebrows, and the one motto is *nil admirari*. Voltaire is made the type of such a mood, ingeniously destructive of what others have thought or done, but himself without a spring of upward movement.

And if it be said that times like the eighteenth century have not been without their spiritual product, Carlyle will both agree, and explain the statement in accordance with his own position. No time is wholly without its prophet. The eighteenth century had both Johnson and Burns. But how were they treated? Each was as a light shining in darkness, and the darkness comprehended it not. The men whom that generation welcomed and applauded were the coffee-house wits, the elegant triflers, the laborious devotees of fashion, men—to use that terrible phrase which our author has applied to de Brézé,—"true to Etiquette, which is their Faith here below."[1] Their concern with the eternal verities is to jest upon that which others believe. And in so far as such an age is not wholly lost, not wholly without significance to history, this is in virtue of some poor remains of a belief, which has persisted in spite of all killing. It is because it cannot quite break away from the heritage of more robust times. In a picture whose vividness could scarcely be surpassed Carlyle shows us a group of apes that cannot strike fire for themselves, but crowd around the dying embers of a fire once lighted by men, and chatter to one another, "How

[1] French Revolution, vol, i, p. 165.

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warm it once was!" He takes it as the distinctive thing in all world-moving heroes that they had a creed for which they would live and die. The dynamic that Mohammed, Knox, Cromwell were able to bring to bear was measured by the strength of their own conviction, and by the absence of conviction in those on whom they worked.

IV

All these doctrines of Carlyle must be judged in full view of the time at which they appeared, and of the existing historical work upon which they were either a direct or an indirect criticism. The absorption in purely political changes had been such as to justify the famous attack upon Scott. What Carlyle has said about reconstructing the life of the common people is trite to us, but it was by no means so to the heirs of the eighteenth-century tradition; it surprises those who know the work of a Lecky or a Gardiner, but it is quite in place if we are thinking of a Smollett or a Hume. We must note that the first paper *On History* appeared just before the great Reform Bill, when the masses had scarcely begun to be recognized in the field of legislation. Its lesson was the same that Carlyle taught nine years later in *Chartism*, when he cried aloud to politicians that in their manifold concern with the West India question, the game laws, and the queen's bedchamber question, they might spare a few days for the condition-of-England question. Perhaps we best see the need for this when we remember Gladstone's letter to Gaskell, written in 1832. It defines the points of a young member's platform on the eve of entering Parliament. "To modern eyes," says Lord Morley, "a curious list it is. The first place is given to his views on the relative merits of Pedro, Miguel, Donna Maria in respect of the throne of Portugal. The second goes to Poland. The third to the affairs of Lombardy. Free trade comes last." [1] When such was the attitude of statesmen what could be expected from historians? Here as elsewhere Carlyle's voice was prophetic.

Again, the insight with which he has set forth the historian's

[1] Morley, Life of Gladstone, vol. ii, p. 8.

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difficulties is all the more remarkable when one recalls how little history in the larger sense had been attempted by English writers We have here a subtle exposure of the pitfalls in "the historical method," and those who rely upon this to solve all political problems would do well to take warning. One has still to reiterate again and again that events may be accurately traced to their causes without our becoming anything the wiser as to which causes we should seek to reinforce, that it is a far cry from knowledge of the social processes which are actual to judgment of the social purposes which are ideal, that no prediction —even if it were as sure as it is commonly rash—about manifest destiny and the inevitable march of events can by itself tell us whether the destiny and the march should be accelerated or retarded. In a word, the historians as such have nothing to do with *valuation*; and they have now come to see this through the limitless variety of opinion which the attempt to value on the basis of mere fact, "sociological law" and the like, has actually produced. Professor Henry Sidgwick in his admirable paper on the historical method has proclaimed that to apply history to social advance demands a preliminary equipment in ethics.[1] Carlyle put this in a nutshell when he reminded us that in "philosophy teaching by experience" we imply not only that the experience is collected but that the philosophy has been separately conceived.

Moreover, one at least of his inductions was reactive in a salutary fashion against very foolish theories which passed current at the time. The methods of natural science were beginning to run riot in social study. It was the hour of a Novum Organum, applied with heroic confidence, and undaunted by absurd conclusions. We have seen a similar thing in that air of finality with which the Darwinian neophyte will settle all problems, not only biological but ethical and political, by reference to the struggle for life and the survival of the fittest. The prevailing habit was to speak of inexorable "social law," into which the human individual was caught up as by a machine

[1] Philosophy, Its Scope and Relations, p. 157 *et seq.* *Cf.* his discussion on the Method of Political Science, in Elements of Politics.

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or a Juggernaut car. *Laissez faire* was plainly the only sensible motto if it was thus impossible to help oneself, and we know the horrors to which *laissez faire* supplied a justification.

When Carlyle spoke of the past as a field in which heroes had worked their determining will, he had in mind such a dogma as Taine's that society moves as a whole in obedience to forces that are as unmodifiable by our choice as Newton's laws. And when he declared that world history is a gradual vindicating of right, he would assert the reality of progress against those who could see only a series of blind changes. On both grounds his protest was sagacious and seasonable. His error was at least less gross than the error which he combated.

One often gets light upon the criticism to which theories have been exposed by looking at them, not in the exposition of their advocates, but in the merry burlesque of contemporary humorists. The *Clouds* of Aristophanes can tell us a great deal about the Socratic circle. *Tom Jones* and *Joseph Andrews* are a quite invaluable source for the historian of eighteenth-century deism. And he who would understand Carlyle's resistance to "social laws" should not neglect Dickens or George Eliot. The period seems to have gone almost insane about the extent to which the human unit is held as in a vise by constraining forces. Political economy was the sphere in which this mid-Victorian idea first elaborated itself, and we may make its acquaintance not only in Malthus and Ricardo but in *Felix Holt* and *Hard Times*. Let us not forget that as late as 1861 John Stuart Mill had to begin his *Representative Government* by proving that the form of polity is in some degree a matter of choice. Everyone was repeating that "governments are not made; they grow." And the suggestion was that the citizens are as purely spectators of this as of the gradual elongation of their legs.

This night of social fatalism seems to have passed. We recognize that even if there are such fixed co-existences and sequences in society we can act upon them. We can no more plead the barrier of external compulsion to apologize for the *status quo* than we can pretend that the rigidity of the cosmic system forbids us to build a bridge or transmit a message by

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electric wire. And we see that no one can predict just how far the original man can go in thus effecting novelties. If the landscape can be transformed in accordance with purposes which we think valuable, so can the social structure. Nay, we can do more in the human province, for our most important data there are the sentiments which men cherish, and these are plastic in a greater degree than inanimate forces. Carlyle's doctrine of the hero, and of the limitless progress which the man of original genius may bring about, was an excellent corrective to that fanaticism which culminated in Buckle, and which gravely told us that by scientific necessity a certain number of letters must be posted each year without a stamp, a certain number of births and deaths must occur, a certain number of suicides and murders must be committed.

But there are other grounds on which we must arraign the doctrine of heroes. It is a conspicuous case to remind us how much easier it is to define than to avoid an historian's difficulties. Carlyle was himself the best illustration of the need for those warnings which he has laid down. For both his *Cromwell* and his *Frederick* were planned to exemplify a personal dogma. He had made up his mind about the supreme importance of great men, and he depicts two momentous periods as circling round the personality of two chiefs. Would he have found this in the events, if he had not brought it with him to their interpretation?

The interaction between an age and its leaders is always reciprocal, and as a rule it is meaningless to ask which side counted more. Such a problem is like that other with which ingenious and imaginative persons have again and again entertained themselves, and whose confident solution has been embodied in such books as *The Nine Decisive Battles of the World.* Suppose, we are asked, that such and such an engagement had issued otherwise than as it did, how far would the course of subsequent history have been different? If Xerxes had conquered at Salamis, if the republican chiefs had won at Philippi, if Charles Martel had been defeated at Tours, what would have happened to Greek culture, to Roman civilization, to Christianity? If there had been no Mohammed, would the Arabs have evolved

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Islam? If there had been no Mirabeau, would the French Revolution have been suppressed at the start? The only intelligent answer is that given by a devout critic as to the authorship of the *Epistle to the Hebrews*, "God knoweth." For the embarrassing point about these riddles is that they ask us to take out of the web of events some particular strand, leaving the rest exactly as it was. And this is what we can never do. No doubt we might disturb less by eliminating a person than by supposing the reversal of an event. If Mohammed or Mirabeau had died in infancy the Arabs and the French would perhaps have been just as they were at the date when these leaders actually came to manhood. But the extent to which they needed a chief to arouse them, or again the question whether in default of the heroes who appeared, some other heroes might not have been forthcoming, is a matter upon which it is supremely idle to speculate. Probably the best comment upon this doctrine of Carlyle is his own disregard of it when he wrote *The French Revolution*. There is no effort to write that story biographically; though if he had chosen to place, say Danton, as he afterwards placed Cromwell and Frederick, there is no saying how deceptive a picture might have come from that unrivaled hand. But he has given us no central figure, and for many a figure which others thought central he has the same contempt that Mommsen had for the supposed leadership of Cicero in the last century of the Roman republic. Perhaps it is he who has opened our eyes on this very matter, so that his own doctrine could make no headway against the overwhelming success of his contradictory practice. Schiller did the same thing for the religious commotions of the seventeenth century. I know not where one would look for so convincing an exposition of the complex forces which must there be taken into account as in the first pages of *The Thirty Years' War*. If Carlyle had ever fulfilled his project of a history of the Scottish Reformation we know how differently he would have treated that, how in all probability he would have placed Knox in the center, and made the whole a sort of section in Knox's biography. It is significant that in *The Life of Schiller* no attention is drawn to this side of that author's

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historical genius. But the work which remains Carlyle's real masterpiece is just that in which there is least of the transfigured hero and most of the genuine character, in which there are fewest supermen, most living men.

Finally, we must rank among Carlyle's more dubious speculations his belief that human experience contains long tracts which are not worth recording. In some passages he seems to teach that the interval between hero and hero had better be suppressed. But the most competent research has led us to doubt whether there is any period which can with advantage be treated in so cavalier a way. Perhaps in nothing should we have to fear the arbitrariness of an expert historical guide so much as in the selection with which on this plan it would be necessary to entrust him. For example, it is said that Charles II always counted the beginning of his own reign from the death of his father, and we may be sure that many a courtly historian at St. James's would have sanctioned the destruction of the Puritan documents on the ground that during the Commonwealth no ideal had either grown or blossomed. One may doubt whether *Baillie's Letters* would have been quite safe even in the hands of Dr. Johnson. John Henry Newman in his Anglican days constructed his *Catena Patrum* so as to close with Waterland or Brett, and re-open with the issue of *Tracts for the Times*. No doubt after his Roman development he would have re-edited on a different but an equally subjective principle. It was long the practice of English historians of philosophy to pass almost at a leap from Neo-Platonism to the Renaissance, assuring us that in the intervening millenium the oracle of thought was mute and the ages were dark. But this sort of treatment has been more and more discredited. It is just in proportion as a period becomes known that we see less reason to look upon it as sterile. When Bacon thought himself *buccinator novi temporis* he forgot the many men in the generations before him without whose work the *Novum Organum* might never have been. Within the last thirty years scholar after scholar has revealed to us many an intellectual and social development which those same dark ages conspicuously furthered. So if we think of the modern time as one of increasing illumination, what we

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have in mind is not Kipling's dawn that "comes up like thunder;" it is Mrs. Alexander's idea—

> Silently as the daylight
> Comes back when night is done,
> And the crimson streak on Ocean's cheek
> Grows into the great sun.

We cannot neglect those dull twilights, and it is surely Carlyle himself who has warned us to remember the vast, unconscious, inarticulate movements, of which some loud-tongued apostle afterwards gathers the credit, but of which he was no originator, rather one of the least important symptoms. While we agree that progress has in some periods been immensely more rapid than in others, we can scarcely over-estimate the need to approach every period with reverent diligence, not knowing what we may there find, but radiantly expectant that we shall not find mere emptiness, waiting to see what new link in the great sequence it may enable us to insert, what unconsidered but very real phase in human growth it may teach us for the first time to identify. If there is one lesson which modern research has taught more forcibly than others, it is that we should not despise the day of small things, or call any part of man's autobiography common and unclean.

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REVIEWS

The Nature of Peace and the Terms of its Perpetuation. By THORSTEIN VEBLEN. New York, The Macmillan Company, 1917.—xiii, 367 pp.

The unrelenting ultimatum of the war has been to come to a decision, an absolute decision, not a conditional one, an "if you are not with us you are against us" state of mind. There is no confusion in all this for those who have kept their patriotism intact. The patriot, if he is not a German, will find much satisfaction in his reading of *The Nature of Peace and the Terms of its Perpetuation*. He will not be discouraged by Professor Veblen's characterization of patriotism as an instinctive emotion "of contentious complexion which finds its full expression in no other outlet than warlike enterprise," whose "highest and final appeal is for death, damage, discomfort and destruction of the party of the second part." Nor will he be disturbed by the conclusion that patriotism is serviceable only to the rulers of men, because if he is the sort of man who reads Veblen he will believe that he himself is moved to the conclusion not by instinct but by his own well-reasoned position regarding an array of circumstances, and that resort to the use of instinct in any of its manifestations is justifiable if it will deal Prussianism in Germany an effective and final blow. Professor Veblen furnishes the patriot with convincing argument that Germany is a standing menace to peace. In this most important contribution to the literature of the war, Professor Veblen asserts as true, what the popular patriot denies, that the people of Germany as well as their rulers are imbued with faith in the dynastic intention of their empire. They have never acquired the "live and let live" spirit. As shown in *Imperial Germany and the Industrial Revolution*, they had not freed themselves of the servility characteristic of the feudal period, before the exploitation characteristic of machine production and modern finance was imposed. Modern Germany in its political aspect is the result of an overlordship of small principalities which had successfully impressed the people and brought them to a state of submission at the time the present German Empire came into existence. Industrial development was then far in arrears in the country, and free contact with other nations and other peoples, which

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modern industry requires for its advancement, had not occurred. When Germany at last adopted the methods of modern mechanical science which originated in England and undertook to apply them to productive enterprise, it did so without passing through the stage of social development which their use and wont represented. That is, the methods were imported ready-made and imposed on a people inured to servitude. The state was the ascendant fact at the time and, less directly than is popularly supposed, it turned the technology which in other countries had set up ideals of political freedom to the purposes of the German dynasty.

In *The Nature of Peace*, Veblen applies this understanding of Germany to the possibility of the Allied nations' submission to the Prussian purpose. Submission might have its advantages for the common man in the countries at war with Germany; in any case the prosecution of the war and its eventuation does not offer him any assurance of advancement or security under the form of government he now enjoys.

German militarism is the very obvious feeder of dynasty; less obvious, as a feeder, is Germany's "industrial strategy." The disastrous results of militarism also are clear, while the nature of industrial strategy is misleading and insidious. Germany's industrial strategy is to conserve its labor power through a system of legal regulations, through education in factory processes and a classification of its people for purposes of maximum efficiency in wealth production. In times of peace Germany conserved its people as it did all of its resources to convert them with a minimum of waste into wealth for the enrichment, not of the life of the people, but of the life of the empire. Such value as resulted for the people was in the nature of a general sanitation, and as virtuous as that appeared, it did not in the end contrast favorably, from the point of view of personal liberty, with the "live and let live" or "the devil take the hindmost" method of other nations. It does not appear that the common man in either case could find large margin for choice between the "industrial strategy" of Germany that fattens him for slaughter, and the chance to die or live lean which "industrial sabotage" offers him at the hands of our business men.

But the common man "does not live by bread alone," as Professor Veblen and our own present exhibition of patriotic fervor remind us. The common man is a patriot irrespective of the advantages or disadvantages of being one. He is "unable without advice" to see occasions for the display of his patriotism. The patriot promoters, that is, the "persons whose place in the national economy it is to look after that sort of thing," are a nation's masters. They are, as it may

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happen, emperors, kings, presidents, statesmen, politicians, and in the countries called democracies, they are in chief the business men who guide and instruct and formulate the political policies of their state. The reasons for an intensive promotion of patriotic impulse in a dynastic state are obvious and have received ample advertisement at the hands of Germany. Manifestly, in democracies, the case differs. For while the *raison d'être* of a dynasty is the extension of empire, and that extension is dependent on an unbroken loyalty of the common man, it is not so apparent why patriotism is a business asset of service to other states where the primary interest is no longer an extension of domain. Private business requires the whole state equipment to pursue its internal and international trade policy. The extension and adventure of private business in foreign countries demand the protection of a state pledged to such business undertakings launched in its name. Professor Veblen points out:

> The run of facts touching this matter is something as follows. At the instance of business men who stand to gain by it, and with the cordial support of popular sentiment, the constituted authorities sedulously further the increase of shipping and commerce under the protection of the national power. At the same time they spend substance and diplomatic energy in an endeavor to extend the international market facilities open to the country's business men, with a view always to a preferential advantage in favor of those business men, also with the sentimental support of the common man and at his cost. To safeguard these commercial interests as well as the property-holdings of the nation's citizens in foreign parts, the nation maintains naval, military, consular and diplomatic establishments at the common expense. . . . . The common man is proud and glad to bear this burden for the benefit of his wealthier neighbors, and he does so with the singular conviction, that in some occult manner he profits by it. All this is incredible but it is an every-day fact [pages 25, 26].

To keep this every-day fact in working shape the business man cannot, it is plain to see, suffer the common man to witness any slight to national prestige. If the Allied nations of Europe, especially England, and later if America could have parried the aggressive pretensions as well as the actual aggressions of Germany without letting them come to an issue and so without endangering patriotism, it is possible that business interests would have preferred peace to war. For private business was getting on very comfortably without war, "barring a slight and intermittent mutter of discontent" against the unabated rule of private business. If any of the nations had passed by Germany's aggressions, and the national prestige had suffered in consequence, the

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stability of the patriotic mind is such as to accept, it might be, the suggestion that the state, as it is at the time constituted, is not a matter of such particular importance as to call for sacrifice. For the business man that would be an untoward event.

While the war against Germany is a war against domination, the prosecution of the war furnishes an opportunity for internal dominating commercial interests of the several nations to entrench the power of the state in its auxiliary capacity to private business. The war has imposed two conflicting obligations on lovers of liberty. As the choice presents itself it hardly seems to be one of love but of hate; whether you hate more the imperial intention of Germany or of private business. If you are jealous lovers of liberty you hate both.

Professor Veblen suggests some possible ground for hope that the war may not serve the interests of the business man completely. He says that it will not result in the same degree as past wars have done in the renewal of patriotism. He expects the common soldiers on their return from the war to bring back as they have always done, "a venomous hatred of the enemies they have missed killing;" but victorious or vanquished they will not come back with the adulation for their superior officers and statesmen or in the spirit of servility towards officers which has been in the past an enslaving heritage of war. Credit will be charged up impersonally, he believes, to the account of technology. At the present moment it seems that a large amount of this credit will go to the submarine or the undiscovered device for submarine destruction.

The influence of modern technology has without doubt encouraged skepticism and disrespect of personages, but it is questionable whether in the prosecution of the war this modern phase of social relationships will have been advanced sufficiently to affect the relative position of the business man and the common man. Professor Veblen finds that prosecution of war has much the same effect on the psychology of a people as have the operations of peace; both, in the same way, have been denatured through the application of mechanics. The war is not needed to develop that happy skepticism and disrespect for personages that had occurred to so considerable an extent in times of peace.

If the war contributes elements which make for the advantage of the common man by placing the business man in a position of disadvantage, they seem to be outside the realm of calculation or prophecy. Their occurrence also is directly endangered by the submission of the common man to the increase of state power under the business man's direction. The common man serves democracy as he opposes all

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increases of state power autocratically assumed and administered, even if assumed to fight the menace of German imperial ambitions.

The inevitable result of the war, in the light of what calculable conditions we have to go on, is the strengthening of state power with increased dictation over the affairs of the common man. If Germany dictates terms of peace or materially influences the settlement of terms, the business man will be forced to abandon his wasteful method of sabotage, and under German leadership and domination adopt as an internal state policy, industrial strategy. Under these conditions the common man will be forced, so far as he may be forced, and how far is uncertain, into the position of serving the state and the business purpose more effectively than heretofore.

If the Allied nations dictate terms of peace they will be placed in the position of rendering some accounting, however slight, to the traditions of their people, that is, to the common interest they ostensibly represent. They will not have the excuse for maintaining the state equipment for carrying forward their international and domestic trade policy which they would have in case of a German victory. Upon the common man's show of self-regard during the war and the peace settlement, will depend the accounting to be rendered him, and the success of the business man in diverting, with the co-operation of the state, the benefits of war to his private account.

For the perpetuation of peace, Professor Veblen counts on the elimination of dynasties and the neutralization of the factors which make for the control of business interests. The factors which he specifies are a protective tariff, national registration of shipping (the international regulation, he believes, can be entrusted to England, which has maintained sea neutrality in times of peace), and national protection of citizens who expatriate themselves in the pursuit of pleasure and profits.

But will the elimination of these outworn customs, no longer of service to the common man, occur, as Professor Veblen suggests, merely by the method of neglect? Established customs and institutions are crowded out, rather than lopped off. As in the case of human traits they are inhibited when something of greater value and significance is introduced. The perpetuation of peace requires the self-assertion of the common man and his interests. So far he has expressed himself in opposition only to abuse. He has introduced nothing of a substitute character. His opposition, it may be, is a sort of pre-vocational training for contributions to come. Peace perpetuation waits on his contribution, whatever that may be and whenever it may come.

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American World Policies. By WALTER E. WEYL. New York, The Macmillan Company, 1917.—307 pp.

Written after the European war had lasted two years and before America entered, Mr. Weyl's book has the advantage flowing from the former circumstance without the passions arising from the latter. The author is first of all honest with himself. He knows that self-deception will not help in fathoming and remedying the conditions producing wars. He does not rest his study on premises or catch-phrases which, because they are widely accepted, are also regarded as axiomatic, but submits these to scholarly and scientific scrutiny to discover whether they are indeed entitled to be the premises for sound thinking. The book is not a special plea, but a bit of honest investigation, with recommendations. Mr. Weyl's is indisputably one of the few really important and useful contributions to internationalism. It is readable, scholarly, thorough, comprehensive, honest; it bears directly on pressing questions, and offers significant suggestions for dealing with an invalid world. If its author cannot be an adviser or a member of the international conference that makes peace at the end of this war, at least his doctrines ought to dominate it.

Mr. Weyl has no patience with the view that world events result from the action of one individual. "So long as the belief holds that one man can set the world on fire, there can be no reasonable theory of war or peace." Economic conditions, chief among them imperialism, produce wars. Many circumstances produce economic congestion in a nation—over-population, decline of agricultural or raw production, surplus capital creating a low rate of interest, and the like—all tending to make a nation which is unable or unwilling to reduce its population or its scale of living, spill over its political boundaries through emigration and the export of capital. These circumstances also lead nations to industrialism as a means of supporting greater numbers. But every form of outward expansion affects other nations, and will meet resistance; the backward people affected will resist, and rival nations will encourage the resistance, and in many cases offer direct opposition. Thus the relief of economic congestion in a nation demands political backing of its expansion. It is not enough to invest money in Africa or Mexico; the natives must be made to work if the investment is to pay; and since the local government cannot or will not exact work from the native, the government of the investor must do it for him by following economic with political domination.

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Political domination, however, strengthens the nation in question against its rivals, by making it possible to turn the newly acquired territory to advantage, economically through tariffs and trade laws, militarily by enlisting or conscripting the population. Thus it affects the balance of power, and competing nations, whether singly or in alliance, either must prevent the annexation or must secure compensation by a corresponding gain. In this competition strength counts, and arms are necessary; but as the economic congestion of a nation or the security and profitableness of its foreign investments may easily appear matters of national necessity, arms are apt to be used aggressively; indeed, the defense by arms against a rival nation of an economic or political control imposed by force on a backward people, is not defense at all, but is in fact a mere continuation of the first aggression. Thus imperialism means militarism.

Not all classes have an equal stake in imperialistic ventures. "In all countries, the imperialistic policy, even when it redounds ultimately to the nation's advantage, is a class policy used to further class purposes." It is the financial and industrial interests that invest abroad because of greater profits, to secure raw products for their enterprises and to assure markets for their finished goods. These classes become directly dependent for their incomes on a continuation of their foreign control; hence they are the advocates of armies and navies—in short, of policies which lead to war. They do not favor war, but rather a policy involving constant chance of war. Between them and the political and industrial democracy at home there is inevitable opposition. To be sure, the people as a whole will in the long run benefit somewhat by imperial ventures, but indirectly only. They get and hold jobs, it is their deposits which are invested abroad, and though they do not get the high rate of interest which the foreign venture brings, they may get a slightly better rate at home by the increased room for investment created by draining some capital abroad. Besides, there are always the gains which come from providing luxuries for those enriched by imperial enterprises. All this, however, has its counterpart. The imperialistic venture involves risk, and hence the investor enters it only on promise of a high rate of profit. The profit goes directly to him, and for its sake he tries to induce his fellow-citizens to remove the risk he is running—in short, to guarantee his investment. The natural opposition of his fellow citizens is sharpened by the growing realization that the imperialism which brings profits to financial and industrial classes brings militarism, which means wars, taxes, ruin and death to the average man.

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Mr. Weyl's epitome of imperialism is so graphic as to deserve reproduction. Imperialism, according to his description,

> is a process varied in its many-sided appeal; a process which reveals itself in the transfusion of capitalistic ideals by means of little school-houses in the Philippines, by means of the strict and rather harsh justice in British colonies, by means of the unconscious teaching of Christian missionaries, by means of the swift decay of ancient, tenacious faiths. It is a process linking the ends of the world, uniting the statesmen and financiers of the imperialistic nation with wretches in the swarming cities of the East, with half-drunken men seeking for rubber in tangled forests, with negroes searching over great expanses of country for the ivory tusks of elephants, with the Kaffirs in the diamond mines who enter naked and depart naked, and whose bodies are examined each day to discover the diamonds which might be buried in the flesh. At one end of the line are the urbane diplomats seated about a table at some Algeciras, at the other, in very depths of distant colonies, there is slavery, flagellation, political and intellectual corruption, missionary propaganda, and the day to day business and planning of white settlers, who are anxious to make their fortune quick and get back to "God's own country." It is a process so vast, so compelling, so interwoven with the deepest facts of our modern life that our ordinary moral judgments seem pale and unreal in contact with it. And so too religion. Christianity which changed in its passage from Judea to Rome and from Rome to the Northern Barbarians takes on again a new aspect when imperialistic nations encounter the peoples they are to utilize. This imperialistic Christianity defends forced labor and slavery as an advance over a mere doing nothing. The parable of the ten talents is the one Christain doctrine in which the imperialist fervently believes [page 97].

With such premises, one arrives at the dictum: "A German defeat, however crushing, will not solve the peace problem, for defeat without security means militarism and reaction in Germany, which in turn means militarism and reaction in Europe." All nations are capable of imperial policies, and hence are not immune from war; and the defeat of the Germans changes nothing but the competitors.

This applies without qualification to the United States. The United States is by many regarded as by nature pacific and non-imperialistic. So far as this is true, it is the result of the economic history and conditions of the nation. Having been able, by reason of possessing undeveloped lands, to expand internally, the nation has faced inward. Since 1898, however, there have been increasing evidences of facing outward on the part of powerful elements of our citizenry. This tendency is unripe, because internal industry still offers adequate opportunities to our capitalists. But experience re-

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veals "that the same forces which act on capital in Europe act also upon capital in America, and that the United States, given the right conditions, is liable to the same ambitions as are imperialistic countries, and is as likely to engage in war to satisfy these ambitions."

Imperialism, then, in its present form, means wars and ever new wars in the future. How may this be altered? Certainly not by proposals which strike at the effect instead of the cause. Among these is hortatory pacifism, which would eliminate war by exhorting men to be good. It appeals to the sentiment instead of to the interest of men. Equally static are proposals for a world government, for disarmament, for arbitration, cooling-off treaties, a League of Peace which would stereotype existing conditions, and a "League of Satisfied Powers" which, establishing a peace of the strong, would impose their present dominance on all future times.

Only those proposals give promise of being useful which strike at the economic cause of wars, and which are dynamic in that they provide for changes with time. The problem of peace today is the problem of organization. International regulation and machinery for enforcing agreements are the two essentials for enduring peace. Since war, economically considered, is an attempt to solve the problem of the utilization of the world's resources, peace requires, not persuasion that nations have no interest or advantage in this utilization, but the erection of arrangements by which the problem of utilization can be settled without going to war. "Such a program will consist of three elements. The first is the freedom of the seas; the second is a joint imperialism; the third is the promotion of an economic internationalism."

The freedom of the seas is necessary because without it the other two would be impossible. It means five things: (1) The abolition of the right of capture. (2) The abolition of the commercial blockade. (3) The establishment of international prize courts and the submission of controversies to such courts. (4) The internationalization of such straits as the Dardanelles, the Suez Canal, the Panama Canal, the Kiel Canal, and the Straits of Gibraltar, as far as that can be achieved by international agreement. (5) Establishment of an international naval convention and of an international body to enforce its decisions, to which international body all powers, naval and non-naval, should be admitted.

Joint or higher imperialism will meet the demand of civilization to penetrate into backward lands, and at the same time remove the virtual certainty of war inherent in rival imperialisms.

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There are three methods by which nations, if they can agree at all, may seek to adjust their rival claims. The first is to do nothing nationally; to permit the backward countries to be exploited at will by individual competitors. The second is to divide the new territories among the rival powers. The third is to secure a joint development by all the great powers.

The third plan means the internationalization of colonies. Many details are involved, and not all can be decided in advance, but the fundamental principle of it all is free trade and equal commercial opportunity for all nations in all international colonies.

It would add too much to an already long review to mention the forces of internationalism. The United States has the opportunity to be one of these forces; indeed, Mr. Weyl's principal object is to show the fundamental importance of our action on the future of the world. The choice America makes between nationalistic imperialism and internationalism determines the world's political future. There are strong imperialists among us whose aims should be defeated in the interest of human progress. America should elect internationalism. This it can do by avoiding imperialist expansion, by devoting itself to broadening its base in agriculture and natural resources through internal development and investment of every sort; and by using its power and resources to back up economic and political internationalism among the several nations. That progress in this direction is slow is no objection to it. The problem "is not how rapidly we shall move, but whether we shall move at all and in what direction."

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The English-Speaking Peoples. By GEORGE LOUIS BEER. New York, The Macmillan Company, 1917.—xi, 322 pp.

During the past three years a goodly number of historians have strayed from their chosen fields of research to the consideration of those problems confronting civilization which the war has made prominent. Some of them, it must be admitted, have not thereby added to the esteem in which they had been held for scientific poise and single-minded devotion to objective truth. More than one reputation deservedly acquired has been impaired by ill-advised ventures of expert historians turned amateur publicists. Those who prize the historical work of Mr. George Louis Beer for its sound scholarship will therefore rejoice that he has passed unscathed the ordeal of writing a "war book." His latest volume is what he calls it, a *livre de circonstance*, concerned

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mainly with "an unpredictable future." By its very nature it cannot claim, and its author does not claim for it, the quality of definitiveness. Nevertheless it is scientific in character, based upon wide and varied reading and prolonged reflection. Thirty-five pages of notes appended to the book serve the double purpose of indicating the authorities upon which the statements of the text rest, and of affording the reader an excellent bibliography of the subjects with which it deals. The book betrays throughout the grasp of a mind accustomed to laborious investigation and trained to the analysis of complex political and social problems.

Its main thesis is the fundamental unity of the English-speaking peoples. Mr. Beer wholly repudiates the theory that the civilization of America is composite, like its population. On the contrary he insists that, like its language and political institutions, it is distinctively English. "The son of the immigrant into the United States," he says, "finds himself at home in Canada, Australia, or Britain, while he feels himself a detached stranger within his own ancestral gates in Continental Europe." With Mr. Beer Anglo-Saxon unity is no new idea begotten of the war, for ten years ago in a work on British colonial policy he wrote:

> It is easily conceivable, and not at all improbable, that the political evolution of the next centuries may take such a course that the American Revolution will lose the great significance that is now attached to it, and will appear merely as the temporary separation of two kindred peoples whose inherent similarity was obscured by superficial differences resulting from dissimilar economic and social conditions.

Whether one agrees with the writer, as the reviewer does, or not, he cannot justly accuse him of going off at a tangent, or making a leap in the dark.

Mr. Beer is not arguing for, or even considering the possibility of, a political union, or rather re-union of the English-speaking peoples. What he favors is an intimate co-operative alliance between them. This would not be the Anglo-American alliance which has haunted the imaginations of some English and American publicists and statesmen. An Anglo-American alliance as formerly conceived is now impossible because that "amorphous aggregate misleadingly designated as the British Empire" is rapidly developing into an international commonwealth, in which England is merely the senior partner.

> An alliance with the British Commonwealth, in which not only Great Britain, Canada and South Africa with their systems of free government, but

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also the most advanced democracies of the world, Australia and New Zealand, are to have a direct voice in determining foreign policy, is patently something quite different from one contracted only with the people of the British Isles [pages 169, 170].

The transition in the Britannic world from empire to commonwealth is of fundamental importance to Mr. Beer's argument, and he is at pains to explain it since it is by no means clearly understood in the United States. He shows how the war has hastened tendencies making for greater imperial unity on the basis of the equality of the dominions with Great Britain. Apart from the effect upon public sentiment throughout the Empire of the enthusiastic and spontaneous military co-operation of the dominions, there has been a significant development in the realm of imperial politics, which warrants Mr. Bonar Law's ironical remark: "The German Emperor has become a great empire-builder, but it is not his empire that he is building."

The attendance of the prime ministers of Canada and Australia at meetings of the British cabinet in 1915 and 1916 was a step toward the admission of the dominions to participation in the determination of imperial policy, and was quite without precedent in the history of the Empire. But far more important was the calling into existence of a new imperial institution. In response to invitations sent out by the British government at the close of 1916, representatives of the dominions and of India sat with the British War Cabinet in the spring of 1917 to form an Imperial War Cabinet. This new institution, in which the unity of the Empire found formal expression, was thus described by Sir Robert Borden, who was one of its members:

> For the first time in the Empire's history there are sitting in London two cabinets, both properly constituted and both exercising well-defined powers. Over each of them the prime minister of the United Kingdom presides. One of them is designated as the "War Cabinet," which chiefly devotes itself to such questions touching the prosecution of the war as primarily concern the United Kingdom. The other is designated as the "Imperial War Cabinet," which has a wider purpose, jurisdiction, and personnel.

The constitutional reconstruction of the Empire was deemed too important and difficult a subject to be dealt with amidst the shock of war, and has been deferred until the advent of peace. The Imperial War Conference of 1917, a body distinct from the Imperial War Cabinet, recommended that a special imperial conference be called at the end of the war to deal with this vast question, and put itself on record as

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in favor of such a constitutional readjustment as would recognize the right of the dominions and India to an "adequate voice" in foreign policy, and would provide for "continuous consultation in all important matters of common imperial concern, and for such necessary concerted action, founded on consultation, as the several governments may determine." It is a far cry back to the British Empire of George III against which Jefferson argued and Washington fought.

It is with the Britannic Commonwealth of the future, not the British Empire of the past, that Mr. Beer desires an intimate alliance. Quite apart from the advantages of such an alliance to either party to the pact, he sees in it the best hope of internationalism in the future. If the war serves merely to intensify that egoistic nationalism which was its principal cause, the end of international anarchy is not yet in sight, and the future of civilization is dark indeed. And, despite the widespread interest of the moment in projects of pacification, there is no assurance that this will not be the case. He who has acquired the international mind can derive scant comfort from the economic planning that has accompanied the war. The efforts that are making to create self-sufficient economic groups—the *Mitteleuropa* project, the resolutions of the Paris Conference, the movement for protection in England—all look to international rivalry and war in the future, not to internationalism and peace. Mr. Beer believes that a cordial alliance between the United States and the Britannic Commonwealth would minimize the danger of future war, and would go far toward counteracting tendencies toward a deplorable economic war after the war.

The alliance which he has at heart would be pre-eminently a natural one. It would rest upon unity of language, uniformity of culture, economic interdependence and substantial community of policy. He reminds us that before the war nearly one-half of our exports went to the British Empire, and it was with the British Empire that our financial relations were closest. This economic interdependence has, of course, been greatly increased by the war. The two great American foreign policies, the Monroe Doctrine and the Open Door in China, would be strengthened by a Britannic-American alliance. The Open Door is as much a British as an American policy, and the Monroe Doctrine has from its inception depended to a great extent for its effectiveness upon British sea power.

Of the obstacles to the realization of a Britannic-American alliance in the past, one of the chief, certainly, has been America's traditional policy of isolation. Holding the views that he does, Mr. Beer naturally rejoices that America has abandoned this policy and entered the

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war in behalf of international morality. He agrees with Mazzini that "neutrality in a war of principles is mere passive existence, forgetfulness of all that makes a people sacred, the negation of the common law of nations, political atheism." It would be disastrous, he contends, for the United States at the close of the war to revert to its former policy of detachment, and such an eventuality is in any event most improbable. He makes it clear that the compact which he hopes to see consummated is no mere stroke of diplomacy, no ordinary treaty of mutual convenience.

> A mere alliance of the English-speaking peoples, were it to imply no more than did such arrangements in the past, would not in itself be so alluring. But one can dimly perceive in it the vague outlines of some new unprecedented form of political association which, though preserving to each part its full freedom, will permanently unite them, not only for the defense of their own common civilization and its ideals, but also in support of the liberty of all threatened by the sword of those who worship at the shrine of organized power [page 271].

R. L. SCHUYLER.

Our Eastern Question. By THOMAS F. MILLARD. New York, The Century Company, 1916.—543 pp.

Contemporary Politics in the Far East. By STANLEY K. HORNBECK. New York, D. Appleton and Company, 1916.—xiv, 466 pp.

Those who are acquainted with Mr. Millard's former work will not expect to find in *Our Eastern Question* a balanced presentation of the facts and problems of that puzzling part of the world east of Suez. The book, as the author frankly states, is a journalistic summary; and apparently American journalists living in China inevitably come to see red everything touched by Japan. The work has attracted considerable attention by reason of its popular style and its arraying of facts and inferences unfavorable to Japan. It is a challenge to the United States to get ready to fight Japan single-handed, or else to make some sort of alliance with interested European powers—an alliance that shall be strong enough to make Japan accept its bidding in Eastern Asia.

Books of this type, which have appeared in large numbers during recent years, already seem a bit passé in view of the events of the present year. So long as the campaign for military preparedness was on, it was a common enough sport to play on the fear of Japan. Now

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that we are actually at war and are voting billions of dollars for "defense" purposes, it is no longer necessary to create hypothetical enemies, and it would be bad manners, to say the least, to make even literary attacks on a nation by whose side we are standing in the war. Hence the output of anti-Japanese books may be expected to decline, at least for the duration of the war, and if we are not too busy with other matters, we may get a chance to settle the real questions at issue upon a basis of reasonable and fair-minded accommodation.

Mr. Millard gives a lively summary of recent events in the Far East, beginning with the Chinese revolution of 1911 and ending with the death of Yuan Shih-kai in 1916. He devotes the first part of his book to China's internal political happenings, and then takes up "Japan's Aggressions in China," from the seizure of Kiaochow to the settlement of the demands of 1915. The second half of his work is devoted to a discussion of Japan's relations with the rest of the world, especially the United States, and to the exposition of a policy of American-European alliance, combined with heavy armament. This he urges as a means of holding in check Japan's overweening ambition in the Far East and, it may be added, on our own Pacific coast, where Mr. Millard is confident that the Japanese government is keeping the immigration issue alive for ulterior reasons. Most of the outstanding facts in the eastern political situation from 1911 to 1916 appear on his pages, but even the informed reader needs to walk warily in the midst of the facts, the alleged facts, and Mr. Millard's interpretations of the facts, all of which are inextricably intermingled. Probably the greatest value of the book for the student is the series of appendices, covering a hundred and fifty pages and containing the text of a considerable number of official documents on China's international relations, including the Hay-von-Bülow correspondence of 1899, the Knox proposals for the neutralization of the Manchurian railways, the statement of the Chinese government concerning the negotiations of 1915 with Japan, and some twenty-odd other interesting and important papers.

Mr. Millard cannot be charged with writing without knowledge, but he is often reckless in statement, and is constantly rash in inference and implication. It would be interesting to know, for example, his authority for the suggestion that Japanese taxes take 60 per cent of the income of the people (pages 268 and 293). Would he have the reader infer from the statement on page 318 that the Japanese government owned 27 per cent of the capital in Japanese industries in 1901, and 87 per cent in 1908? What shall be said of the publication of agreements merely "alleged to have been made" in 1914 between

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Sun Yat Sen and the Japanese to procure a Chinese revolution, even if their authenticity is not vouched for (page 176)? Perhaps Mr. Millard got this evidence from that Japanese emissary whose name he withholds, but who went to Yuan in 1915 to advise him to take the throne (page 180). Doubtless there has been an abundance of Japanese intrigue in China during the past few years, but no good purpose is served by the publication of this sort of unverified rumor and vague innuendo concerning government complicity. One who has just learned that missions in China have almost driven their original enemies, superstition and the ignorance of strangeness, from the field (page 341) will not be surprised to turn the page and discover that Shintoism is a form of Buddhism (page 345). This suggests the frame of mind of the tourist who asked the distinguished theologian on the trans-Pacific steamer, "Professor Blank, won't you tell us in just a word what this Buddhism is that one hears so much about?" Persons familiar with the circumstances of the Pacific Mail withdrawal from the great western ocean may judge of Mr. Millard's care in sifting evidence by his statement that the withdrawal was due to the passage of the Seamen's Act. As illustrating his balance in judging matters of national motive, instance his reference to the unwillingness of the United States to seize territory, in proof of which he cites Mexico—very pertinently, for the period since 1854—and then adds, with charming naiveté, "If further instances are required, take Cuba, take Panama, take the Philippines" (page 283). A scoffer might reply that we had taken the Philippines and had taken Panama in all but name—and then he might add Haiti, Santo Domingo and Nicaragua to the list. Why should an American be aggrieved at Japan's reserving her coasting trade to her own ships, when we do the same thing ourselves, and even extend our coasting laws to the Philippines? In quoting the British editor of the *Japan Chronicle* on this point among others (page 535), one might have suggested that we could not cast the first stone. Indeed, it is hard to find anything in the conduct of Japan during the past half-century that is not drawn from the book of western example, but Japan is a newcomer in the field of world politics, and western journalists seem to feel that she ought on that account to be innocent of guile.

Mr. Millard does state the two real issues between this country and Japan, namely, the question of immigration and naturalization, and the problem of trade and investment in China, with the political consequences that hang on it. He does well to insist on the open door as the only possible solution of the Chinese difficulty, and to emphasize the necessity of finding a way to make that policy effective. But his

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notion of accomplishing it by re-creating a balance of power in the Far East indicates a type of thinking that has had to acknowledge bankruptcy since August 1, 1914. A peace that is to be made in the Far East by merely overawing Japan will be no less temporary than one that is made by neglecting the rights of China. Enduring peace can be based only on co-operation with both countries, and the present temper of the Japanese government suggests the possibility of working out at this time an actual plan of co-operation. It cannot be said that books like Mr. Millard's do much to advance that desirable end.

Far different in spirit, purpose and method, is Dr. Hornbeck's substantial volume on *Contemporary Politics in the Far East*. It is the book of a student rather than a propagandist. Its author used his five years in the East to good purpose in acquiring "a working knowledge of the instruments, motives and forces which underlie and contribute to make the problems of Far Eastern politics." He has chosen, he tells us, "to give first place to statements of fact, to quote from documents, to cite the opinions of other authors, to refrain from extensive comment, and to make suggestions more frequently than positive assertions at points where conclusions are to be drawn." If his book, under such circumstances, has the inevitable anti-Japanese flavor that attaches to all books recently written by Occidentals resident for a time in China, even the apologists of Japan must admit that the fruits of Japanese government policy in China up to the beginning of 1917 furnish a solid basis of fact for such feeling. Dr. Hornbeck's book is not an alarmist work, like Mr. Millard's, nor like the recent diatribe of Mr. Frederick McCormick; it does not urge us to buckle on the sword; it does not even tell us that war is inevitable. It simply attempts to set forth the facts of the current Far Eastern situation as the author sees them, and to point out the need for a definite and consistent policy on our part.

The first half of the book is occupied with a serviceable sketch of the constitutional situation, the status of political parties, and the actual government of both China and Japan. Nowhere else in English, so far as the reviewer is aware, can a reader obtain within so short a compass so good an idea of these little-known facts. This discussion is especially valuable in showing the present political status in Japan, and in indicating to a degree the sharp divisions of opinion that separate the various political and social groups. Most people in this country seem to have an idea that the Japanese are a political unit, supporting the double dogma of the divine descent of the emperor and the divine mission of the nation to rule the East. Few Americans

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realize how rapidly political development is occurring in Japan, and appreciate the possibility or the importance of co-operating with the liberal forces so rapidly making themselves felt there.

Much the same thing may be said of China. Like many other observers, Dr. Hornbeck appears to have reposed undue confidence in the ability of Yuan Shih-kai to hold down the democratic movement in that country. In view of the swiftness with which China changes in these days, the political theorists may have to revise their judgments as to the length of time that will be required to transform the country into a genuine republic, even if not a republic after our model.

The hundred and fifty pages in which Dr. Hornbeck traces the growth of Japanese imperialism from the entrance of Japan into Korea up to and including the demands of 1915 on China, are again a satisfactory summary of an important series of events. As is natural, the author does not here succeed so well in keeping his own judgment and interpretations in the background, and in view of his Chinese sympathies, he perhaps does less than entire justice to the point of view of the statesmen of Japan, face to face with the uninterrupted aggressions of the European nations in Asia, not to speak of the United States in the Philippines. He does, however, give full recognition to the material benefits that Japan has brought to Korea and Manchuria.

> The Japanese have without question efficiently developed their holdings, they have greatly increased the trade of South Manchuria, and they have established facilities which are appreciated by every foreigner and enlightened Chinese. Their progressive commercial and industrial activity, their insistence upon building well, their application of modern methods and principles, their regard for sanitation and health measures, and the success which attends their efforts stand as a constant object lesson to the Chinese [page 279].

But he adds with much point:

> If Japan wishes to convince the Chinese and the world that her presence and her activities on the mainland are for the good of the world, that she is seeking to promote the welfare of the Chinese along with her own interests, and that she is sincerely concerned with the problem of establishing and maintaining the peace of the Far East, it will be necessary not only that she continue her course of excellent, material, constructive effort, but that she put a check upon various practices which are unfair to the subjects of other nations, put an end to various abuses which have so far characterized her diplomatic and political dealings with China, and demonstrate in her treatment of the Chinese, that she is disposed to be and is capable of becoming a moral as well as a material benefactor [page 281].

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This is eminently good sense, and recent events give ground for hoping that Japanese statesmen recognize its truth, and are determined to mend their ways.

In view of our present state of mind as regards Germany, it is worth while in passing to call attention to Professor Hornbeck's brief record of German activity in and around Tsingtau, and to quote his conclusion.

> There was in the later years of German presence in Shantung little of which, from the point of view of the open door policy, complaint could be made. . . . Judged upon the basis of substantial accomplishment, successful and just administration, and real contribution to the economic and social welfare of the people who fell within the range of their influence, none of the powers holding bases on the China coast can offer better justification for its presence than could the Germans [page 299].

It is also useful to note the sober account of the purely economic as opposed to the political forces that are affecting our trade and investment in China. Current discussion here is predicated largely on the assumption that Japanese political interference and the refusal of our government to support the Six-Power loan have driven the last nails into the coffin of our Chinese trade. In fact, our trade with China is growing, but before the war it was not growing so fast proportionately as that of some other countries. Though Dr. Hornbeck is convinced that Japanese political influence has been used without hesitation for the advantage of her business men at the expense of others, he points out that "the proximity of Japan gives her, of course, an advantage over all competitors; but our own indifference to overseas markets and foreign interests generally is chiefly responsible for the fact that we lag behind" (page 391). Dr. Hornbeck also indicates the substantial asset of good-will possessed in China by American business in consequence of the extremely creditable record that we have made in our political and educational dealings with China on her own side of the Pacific (chapter xx), however black our record in the treatment of the Chinese here. He seems inclined to regret our withdrawal from the Six-Power loan group (page 395); at any rate he favors a policy of concerted action as regards Chinese loans. While he passes no formal judgment on the matter, apparently he thinks that the best hope of future peaceful development in the Far East lies along the lines of possible combined action among the powers concerned, to give reality to the principles of the open door and the integrity of China. In carrying out this policy, he appears to regard the attitude of the Japanese government as representing a difficult though not an insuperable

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obstacle, and he would doubtless agree that the changed position taken by the Terauchi administration during the present year affords new ground for hope in that quarter. At no time in recent years has the situation in the Far East contained more elements of promise. The more need to heed Dr. Hornbeck's warning as to our Japanese relations.

> Nothing but honest education, an approximation of like standards and ideas, fairness, patience, sympathy, recognition, on each side, of the political necessities and the legitimate interests of the other, and mutual determination neither deliberately to give nor deliberately to take offense will enable the people of the United States and of Japan—while continuing in the course of competition and rivalry which they must inevitably pursue—to remain friends and at peace [page 378].

In closing, it may be pointed out that our present Far-Eastern situation calls for prompt forward-looking and constructive action. The ending of the war, failing general disarmament, will find us equipped with a strong army and a powerful navy. There will doubtless be prompt pressure to make us do our duty by China and our investors in China, if the peace settlement leaves the problem of China unsettled. The more need, then, for the prompt elaboration of a plan of common action whereby the United States, Japan and the European powers may control the action of their investors in China, to the end that China may preserve her political integrity and assure her economic development. The Lansing-Ishii agreement may be its forerunner.

H. R. MUSSEY.

The New Protectionism. By J. A. HOBSON. London, T. Fisher Unwin, 1916.—152 pp.

Advocates of free trade in England — those whose faith in the fiscal system adopted in 1846 has not been weakened by the war, as well as those who have been much perplexed as to how to deal with Germany after the astounding revelations of German character and aims that have come with the war—must be deriving much satisfaction from Mr. Hobson's searching analysis of the new protection, and of the results likely to follow if protection and tariff preferences are adopted by Great Britain. Mr. Hobson's book will also be stimulating to Dr. Charles Eliot, Professor Henry Farnam, Professor Giddings, and the other twenty-two American publicists who signed the memorial of May 7, 1917, to Balfour and Viviani, expressing regret that after the war there is to be "an economic war between the present foes," a contest which the signers of the memorial fear "could

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only result in future cataclysms, even greater than that which has already piled up on future generations burdens of taxation and sorrow well-nigh too grievous to be borne."

Mr. Hobson's interpretation of the new protection—of the protectionist movement that in England has developed out of the war—is that its moving spirit is the desire of groups of business men "to exploit the emotions of friendship and antagonism generated by the war, and the immediate economic exigencies of the situation, in order to get a public policy that will yield them private profit."

The old protectionists of the Chamberlain school realized long before 1914 that sentimental imperialism, patriotism and militarism were deficient in volume and intensity. Massed and exploited as these forces were by the protectionists of 1903-1914, they were not sufficient to turn the scale. The new protectionists have now a far greater and more various fund of sentiment and passion at their disposal; and, as Mr. Hobson rightly conceives, they hope to avoid close economic controversy, or at any rate to reduce it to a wholly subordinate place in their campaign for a protective tariff.

Mr. Hobson is perturbed neither by the popular will of today to boycott Germany and everything German, nor by the claim of the new protectionists that everything must be done to make the British Empire self-sustaining. It is possible that he overlooks the depth and intensity of the wide-spread popular loathing in England of Germany and everything German, due, not alone to the fact that Germany is at war with England, but to the unspeakable atrocities on land and sea of the German method of war. Today, English men and women are regretting among themselves what they characterize as the pollution of English soil by the detention in England of German prisoners of war who were concerned in the squalid havoc preceding Hindenburg's retreat of March 1917. The time seems remote when dock laborers at Leith, Newcastle, Hull, Grimsby, London or Southampton will consent to unload cargo from a German port, or when an English shop-keeper will dare to display in his window a line of goods, no matter how cheap or attractive, bearing the label "Made in Germany."

Mr. Hobson does not entirely overlook this feeling, which is as strong and wide-spread in the dominions as it is in England. He conceives, however, that its practical expression and satisfaction can safely be left to individuals. He is also convinced that only a small part of the oversea trade of Germany had a political, a pan-Germanic as distinct from an ordinary profit-making aim. He is equally con-

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vinced that there are only a few industries that, from the standpoint of national defense, it is essential to keep completely in British hands. These he would treat as public utilities, to be developed and controlled by the government.

In brief, Mr. Hobson's purpose is to demonstrate how much it will cost Great Britain, and how greatly it will jeopardize peace, if Great Britain abandons free trade for protective tariffs and preferences, and also recasts her navigation code and her coaling-station regulations with the avowed object of boycotting Germany and her wares. A tariff, Mr. Hobson is convinced, will compel Germany to push trade with increased energy in countries that are not of the Entente economic alliance; while as regards the navigation laws, Germany can easily circumvent these by transferring much of her ocean-going tonnage to neutral flags.

Unquestionably the new protectionists will have much difficulty in answering Mr. Hobson. But under existing conditions the new protectionists are not likely to concern themselves overmuch with the arguments of free-trade economists. At the next general election sentiment and emotion, due to outraged feeling and wide-spread bereavement among all classes, along with the economic advantage that protection will afford to agriculture and to other industries of less national importance, are likely to give the new protectionists a majority in the House of Commons. Today it would seem that the hope of free traders lies not so much in the soundness of their case, and the humanity of the policy they pursue at this great crisis, as in the stupendous difficulties of framing a protective tariff that will really be of service to Great Britain, to all the dominions, to India and the crown colonies, and that will not at the same time antagonize any of the nations now allied with Great Britain in saving the world from the Prussian conception of German Kultur.

The difficulties with the dominions will be almost insuperable, especially if manufacturers are asked to agree to lower tariffs on manufactured goods from Great Britain; and it must never be forgotten that the success of Great Britain's newer colonial policy during the years from 1840 to 1914 has been achieved to a large degree because Great Britain after 1859 made no protest against the high protective tariffs of the dominions, and never asked that there should be lower duties in these tariffs for the advantage of British manufacturers.

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American Diplomacy. By CARL RUSSELL FISH. New York, Henry Holt and Company, 1915.—xi, 541 pp.

The present volume, whose author is professor of history in Wisconsin University, appears in the American Historical Series, edited by Charles H. Haskins, professor of history at Harvard. The style of the work is lively, with a tendency to broad generalizations. "Mr. Dooley," by apt quotation, figures (page 371) as an authority upon the quality and performances of our diplomatists. The reader, thus wafted along and entertained, finds it irksome to linger, even though his eye may chance to fall upon statements that seem to lack verification.

By the "Family Alliance" (page 18) the author, as the date shows, intended to refer to the treaty designated in the original text and universally known as the "Family Compact" (Spanish text, "Pacto de Familia," French, "Pacte de Famille"). It is stated that by this treaty "either country might, if engaged in a defensive war, call for the assistance of the other," but that "in such case it must make good any losses which the succoring party should sustain." In reality, the contracting parties agreed (article i) that they would "consider as their common enemy every power who shall become such to either of the two Crowns;" that (article xi) succors must be sent by the one upon the request of the other "for any offensive or defensive enterprise;" and that (article xiv) "in no case shall the said ships or troops be at the expense of the power to whom they are sent." There was, however, one limitation which the author does not notice—namely, that France should not demand the assistance of Spain, "unless some maritime powers should take part in the war, or unless France should be invaded." It was perfectly understood that the chief object of the Compact was resistance to England.

The author states (page 21) that at the time of the American Revolution international law was "so far from being the formal and inclusive system which it is today that it was not beyond the comprehension of amateurs." In fact, some of the profoundest treatises on international law—treatises as much beyond the comprehension of the amateur as Coke on Littleton or Fearne on Contingent Remainders—antedate the American Revolution. We are also told (page 22) that our early diplomatists took "the lead in a new departure in international law—the science of international arbitration;" but the process was much employed even among the Greeks, to say nothing of the scores of cases in the five centuries preceding the birth of the United States. John Adams, we are informed (page 48), succeeded in incor-

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porating into the Treaty of Peace of 1782–83 "a recognition of American rights to fish on the 'Banks,' and sufficient inshore privileges to make fishing profitable." In reality, his great triumph was in obtaining the "liberty" of an absolutely joint participation in the inshore fisheries. On the same page it is stated that the American commissioners "readily agreed to an article that creditors on either side should meet with no lawful impediment to the recovery" of debts previously contracted; but, in fact, Franklin and Jay entertained grave doubts as to their power to agree to annul state laws, and the matter was settled only by a dramatic utterance of Adams in the presence of the British commissioners. It is stated (page 50) that the Treaty of Peace "gave us a territory, not indeed logical and satisfactory, but ample for present needs." The immense territorial concessions obtained by the American commissioners were one of the marvels of the age.

It is represented (page 104) that Gouverneur Morris, while minister to France, "on the whole maintained a commendable impartiality." Those who are not startled by this statement may do well to read Trescot's delightful volume on the diplomacy of the administrations of Washington and Adams. The name is Trescot, not "Trescott," as it is repeatedly spelled in the present volume (pages 386, 387, 401). We also find "Cockrane" (page 206) for Cochrane, "Baron de Tuhl," (page 209) for Baron de Tuyll, and the word "mondel" (page 474) for mondial. Such errors might perhaps be ascribed to dictation or to oversight in proof-reading, but this would not account for the application of the title "Dominica" (page 327), the name of a British island in the West Indies, to Santo Domingo.

It is said (page 110) that England had as the result of her experience "devised" a variety of practices, one of which was that enemies' goods at sea might be seized or confiscated even when carried in neutral ships. This was, however, the common law of the sea, and long antedated the establishment of Great Britain's maritime power.

The Webster-Ashburton Treaty of 1842 is said (page 235) to have "revived and expanded the extradition article of the Jay Treaty, which had expired with the War of 1812." In reality, that article was never "revived," nor did it expire with the War of 1812. It expired, as did all other articles of the Jay Treaty, except numbers 1–10, and number 12, in 1808, by the express limitation of article xxviii.

The Marcy-Elgin Treaty of 1854 is described as having harmonized the growing difficulties of the "Newfoundland fisheries" by "submitting some points to arbitration, and by securing to us certain desired privileges, in return for which the Canadians were given the right

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to import their fish into the United States free of duty." Nothing was submitted to arbitration except the delimitation of certain reserved fisheries. But the capital fact of the treaty is that with this exception it temporarily restored to the American fishermen the great inshore liberty which the War of 1812 interrupted and the Convention of 1818 for the most part gave up. On the other hand, the commercial schedule, which was reciprocal, embraced not only "fish of all kinds," but in general the products of the farm, the forest and the mine. Moreover—and this is also a point of interest to students of constitutional law—the treaty conceded to British subjects the inshore fishing privileges of the eastern coasts and shores of the United States as far south as the Chesapeake Bay, with the reciprocal reservation of the salmon and shad fisheries and fisheries in rivers and the mouths of rivers. It may further be observed that the treaty, while dealing with the Atlantic coast fisheries, thus expressly provided that either the British Parliament, or the Newfoundland Provincial Parliament, or the Congress of the United States, might omit Newfoundland from its operation.

It is said (page 288) that "we took a new step in our diplomatic relations . . . when in 1854 we joined in an international act concerning the treatment of those wounded in war." There was no international act of that kind of 1854; but if the statement was intended to refer to the Geneva Convention of 1864, it is necessary to point out that the United States did not accede to that convention till 1882.

The author does me the honor to cite, on page 289, my volume on *American Diplomacy* (pages 168–199) as authority for the statement that prior to our naturalization treaties, countries other than the United States "all asserted the principle of indefeasible allegiance, while we asserted the right of individual choice of nationality." The volume cited shows, at the place indicated, the contrary. The author so states (page 289) the Koszta case as to convey the impression that the United State undertook to protect Koszta because he "had declared his intention of becoming an American citizen." This is a popular supposition which Marcy most sedulously endeavored to correct.

In connection with the subject of trans-isthmian traffic, it is stated (page 291) that the first step in the formulation of the policy of the United States "was a treaty with New Granada or Colombia in 1844," but that "this arrangement was unsatisfactory and another treaty was drawn up in 1846." There was no treaty of 1844.

It is represented (page 305) that when Seward on April 1, 1861, proposed "the development of quarrels with Great Britain and France

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as a means of restoring unity at home;" "Lincoln made no comment"! In reality, far more important than Seward's amazing counsel of desperation, was Lincoln's famous rebuke, which forever fixed Seward's relation to his chief. In submitting his proposal, Seward somewhat brusquely intimated that a definite foreign policy must be adopted, that the President must either "do it himself" or "devolve it on some member of his cabinet," and that, once adopted, "debates on it must end." Lincoln, without permitting a day to elapse, quietly but promptly answered: "I remark that if this must be done, I must do it;" and as to any points subsequently arising, he significantly observed that he wished, and supposed he was "entitled to have" the "advice" of "all the cabinet."

The statement (page 324) that from Monroe's message in 1823 down to our Civil War there was "no controlling intervention by European powers in American affairs," overlooks the joint intervention of Great Britain and France between Buenos Aires and Montevideo in 1845. Perhaps certain other matters, such as the Mosquito protectorate, are not considered by the author as falling within the phrase "controlling intervention," although contemporary statesmen were inclined so to regard them.

Of the British members of the Joint High Commission by which the Treaty of May 8, 1871, was formulated, it is said (page 345) that "the chairman was Earl de Grey, and with him were Viscount Goderich, president of the privy council" etc. But, if Viscount Goderich was present, so also were the Earl of Ripon and Baron Grantham, neither of whom the author mentions. In fact all three were titles belonging to Earl de Grey, who nevertheless acted in a single individual capacity. The name of another British member is given as Montague Bernard, but perhaps few have observed that Bernard's first name was spelled "Mountague." Charles Francis Adams is said to have been president of the Geneva tribunal, but the president was Count Sclopis, the arbitrator from Italy. The American case is said to have been presented by "William Evarts, M. R. Waite, B. R. Curtis, and Caleb Cushing." It was presented by the American agent, J. C. Bancroft Davis. William M. Evarts and Messrs. Waite and Cushing were of counsel. B. R. Curtis was not connected with the tribunal.

The United States, by a separate treaty with Hanover of November 6, 1861, did accept a plan formulated by other powers for the abolition of certain tolls on the navigation of the River Elbe; and a similar treaty was made with Belgium in 1863 for the redemption of certain tolls on the navigation of the Scheldt. But it is misleading to speak

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(pages 351–353) of the United States as having in any way co-operated in "opening the Elbe" or "opening the Scheldt," which were internationalized and opened to the navigation of all nations by the Vienna Congress treaty of 1814.

Lord Salisbury's announcement on May 16, 1888, that the fur-seal negotiations had been suspended on the request of Canada is represented (page 378) as a "counter stroke" to the United States' rejection of "the northeastern fishery treaty on May 7." The treaty failed to receive the approval of the Senate only at the end of August; the supposed rejection was the adverse report of a majority of the Committee on Foreign Relations. It is represented (page 378) that in March 1889 "Congress, largely through Blaine's influence, asserted that Bering Sea was under the territorial jurisdiction of the United States." Fortunately no such step was taken, a declaration to that effect, inadvertently adopted in the House, having been rejected by the Senate. It is stated that in the fur-seal arbitration "the American case was presented by Edward J. Phelps, Frederic Coudert and Henry Cabot Lodge." The case was presented by the United States agent, J. W. Foster. Henry Cabot Lodge was in no way connected with the tribunal. At the head of American counsel was the late James C. Carter.

It is stated (page 388) that, in the first International American Conference "nothing could be done on the subject of arbitration." In reality the transaction on which Mr. Blaine, the president of the conference, chiefly congratulated himself was the adoption of the comprehensive plan of international arbitration, in which he took a direct personal part. This plan, which stands first among the acts of the Conference, was not afterwards ratified, but this is true of many other acts of the International American Conferences. It is said (page 451) that a Pan-American Conference was held in Mexico in 1901, and that such conferences have since been held every five years, the third—the second of the "new series"—at Rio de Janeiro in 1906, and the next at Santiago of Chile in 1911. There has been no "new series." The fourth conference was held at Buenos Aires in 1910, four years after the conference at Rio de Janeiro. None has as yet been held in Chile.

It is stated (page 474) that the peace "conference" at The Hague devised "a model treaty known as the mondel [*sic*], or world treaty, which "provided that all differences of a legal nature as well as those relating to the interpretation of treaties . . . and which did not affect vital interests, independence or honor, should be referred to the Hague

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Court." The terms quoted are those of the Anglo-French treaty of 1903, which was subsequently widely followed by other powers. The great treaty of The Hague was far more comprehensive and of a radically different nature.

When we are told (page 8) that "great figures like Franklin, John Quincy Adams, and Hay stand out by their achievements [in diplomacy] more conspicuously than do any of our legislators and than all but a few of our administrators," one cannot avoid the reflection that in the formation of judgments as to the relative standing of public men, time is always an important and often a remorseless factor. Franklin is the only statesman whose name appears on all our four great fundamental acts—the Declaration of Independence, the Alliance with France, the Treaty of Peace with Great Britain, and the Constitution of the United States. If we say that John Quincy Adams signed the Treaty of Ghent, obtained the cession of the Floridas, and formulated the Monroe Doctrine, we have only begun to recapitulate his pre-eminent services. In assigning to Mr. Hay not only co-equal rank with these men but a conspicuousness above all American legislators, proofs, not here recapitulated, will be requisite.

We are told (page 304) that from 1861 till Hay became secretary of state in 1898, "the only members of any administration" who had had "direct experience in foreign affairs" were "Carl Schurz under Hayes, and Levi P. Morton and J. W. Foster under Harrison." If the vice president is to be reckoned as a "member" of the "administration"—an assumption rather hazardous—then it is true that Mr. Morton had been minister to France. That Mr. Schurz spent a few months as minister at Madrid is a fact, but hardly a significant one. But what is to be said of William M. Evarts, secretary of state from 1877 to 1881, who had discharged an important special mission abroad, had argued great international cases, was counsel at Geneva in 1872, and sometimes aided his friend Seward in difficult foreign matters? Moreover, Marshall Jewell in 1874 resigned the Russian mission to become postmaster general; Horace Maynard, postmaster general from 1880 to 1881, had been minister to Turkey; Wayne Mac Veagh, who became attorney general in 1881, had served from 1870 to 1871 as minister at the same court; Charles Emory Smith, who became postmaster general eight months before Hay became secretary of state, was minister to Russia from 1889 to 1892. Possibly "there were others."

As contrasted with the sudden apotheosis of Hay, it is curious to read the brief dismissal of Hamilton Fish. "A less aggressive man than Seward, serving under a more interfering president than either Lincoln

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or Johnson," we are told that, although Fish was "trained, skilled, dignified and wise," he "achieved less" than Seward "and deserved no particular fame for originality." Such a statement immediately and necessarily calls up one of the great landmarks of world-history in the nineteenth century, the Treaty of Washington of May 8, 1871, and its comprehensive, far-reaching settlement of questions, the adjustment of which was rendered more difficult and more conjectural by the futile and unadvised conventions which furnished a sort of anti-climax to the close of Seward's career as secretary of state. In this celebrated instrument may be found the famous "three rules," which the British government certainly professed to regard as savoring of originality, together with provisions for the settlement of Civil War claims, of fisheries questions, of the San Juan water-boundary dispute, and of the claims generically known as the Alabama Claims. The Geneva tribunal, by which the award on these claims was rendered, still furnishes the high-water mark of international arbitration. Of this treaty it is on all hands confessed that Hamilton Fish was to a great extent the author and finisher. The long and complicated negotiations which preceded its conclusion he inspired and conducted. Other distinctive achievements might readily be specified. Moreover, the public records show that there has been no secretary of state whose utterances and decisions have been cited by his successors more frequently or with greater respect and approval than his.

Although the reviewer has by no means enumerated all the exceptionable statements he has noticed in the parts of the volume which he has examined, yet he is prepared to believe that the author has done himself an injustice, which may be ascribed partly to writing under pressure on a subject with which he was not intimately acquainted, and partly to the unguarded indulgence of a verbal facility which too often impels its possessor to generalize upon mere impressions. At the present moment such things are not uncommon. On the contrary, so widely do they prevail, even in quarters where we should least expect to find them, that we can only conclude that the insistent pressure of the insatiate popular and journalistic demand for something, for anything "up to date" or "timely," has temporarily unsettled our standards. Let us beware of this tendency, lest we cease to value and even to respect the patient and laborious methods by which alone scholarship can discharge its obligations in the garnering and dissemination of the truth.

J. B. MOORE.

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State Government in the United States. By ARTHUR N. HOLCOMBE. New York, The Macmillan Company, 1916.—xiii, 486 pp.

The history of political studies in our American universities is the history of a century of immunity from foreign aggression. The period intervening between English and German assaults upon our right to navigate the seas was an era during which the country was free not indeed from war, but from outside interference—free to solve for itself, whether by peaceable development or by force of arms, the problems of national consolidation and enlightened self-government. No one can say whether during this period of isolation all has been done that might have been done, whether by the community at large or by its organized centers of light and leading. But assuredly our universities have done much to guide us in the temporarily interrupted task. Now that the main current of their energies, like those of the country at large, has been deflected into other channels—now that, to put it bluntly, the American college is all but demoralized, now that the arts of peace are subordinated to armed defense, and the slowly maturing aims of higher education are sacrificed to the imperative demands of a national emergency—it is of interest to measure the progress of a hundred years. Our oldest university is only one of many that has contributed in this way to our national needs. What has occurred here, however, is fairly typical of what has occurred throughout the country.

In June and July of 1816 the chief justice of Massachusetts was paid $400 to deliver seventeen or eighteen lectures to Harvard college seniors upon government and law combined. This was the first appearance, since the dismissal of Harvard's first president a hundred and sixty years before, of political studies in its curriculum. The design of the course, as stated in the statute establishing the professorship, was to train "useful and distinguished supporters of our free systems of government," as well as "able and honourable advocates of the rights of the citizens." The division of purpose already manifested in this language—the intention to educate both politicians and lawyers—has become greatly accentuated with time. The academic year 1916-17 saw, in place of this single lecturer, two complex and mutually independent organizations in full swing: an entire department of government inside of, and an entire professional law school outside of, the college. This remarkable development of educational machinery has been accompanied, in each case, by a corresponding expansion of educational ideals. Productive scholarship has been

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added to teaching as one of the recognized functions of the resident staff; and in accordance with this design notable contributions to knowledge have been made by members both of the government and of the law faculties. The original aim of the college, however—that of training practitioners of these two crafts—has not been lost sight of, and so far as the law school is concerned, is clearly still the dominant one. The training of young men to practise law is the main object of the school; incidental to this, a partial systemization and gradual re-statement of the law that they are called upon to practise. In the field of government the emphasis lies perhaps on the other side. Knowledge for the sake of knowledge—the academic as against the professional ideal—is more clearly evident here. Those, however, who imagine that this tells the whole story, are ignorant of the demand made by college students for instruction that will be of practical assistance to them in public life, and of the extent to which, both at Harvard and elsewhere, attempts have been made to give courses that will accomplish this purpose. If the universities' function as training schools for practitioners is more generally recognized in the field of law than in that of government, the explanation doubtless lies herein: The professional lawyer, though frequently suspect, has managed to maintain his position in this country as a legitimate agency in the administration of the law. The professional legislator or office-holder, on the other hand, has never become thoroughly acclimated in our democratic scheme of government.

It is only by realizing what the Harvard department of government is trying to do, that justice can be rendered to the present publication by a member of its faculty. Professor Holcombe's volume exhibits some — doubtless the most important — attributes of a ripe scholar. These are a high standard of accuracy; a broad treatment of many different phases of his subject; a marked ability to get below superficial phenomena and reveal the essentials underneath; scrupulous fairness in the statement of opposing arguments; definite yet unobtrusive indication of his own conclusions. The weakness of his work lies principally along the lines of literary craftsmanship. Its structure, to begin with, is open to serious criticism. In spite of an effort to reduce the ideals of the Fathers to the twin principles of the "sovereignty of the people" and "the reign of law," and in spite of an effort to explain the more important changes since their day as due to a revolt against legislative supremacy, there is no logical development of a few central themes. Instead, scattered points of departure are taken; much valuable information is given about and

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around these points; then these batches of material are brought into some sort of logical relation with one another; connecting links finally create an artificial coherence. Let one illustration suffice. The author has much to say that is worth saying in regard to the bicameral system, legislative apportionment and legislative procedure. But the method by which he combines these three topics into something that looks like a coherent whole—making his argument against the bicameral system a scaffolding to carry the other two—is ingenious rather than convincing. For the purposes of the college classroom this loose structure would do very well. It does not measure up to the highest standards of scholarship, however, as exemplified by other products of this same department.

Furthermore, apart from the arrangement of the material that he puts in, the author has had to face the even more difficult problem of what he shall leave out. His basic principle here seems to have been to omit everything that has to do with local government. He has not been able to apply this principle consistently, however. In order adequately to discuss the development of the state-wide referendum, he is obliged to devote a couple of pages to municipal home rule. Similarly, discussion of the proposed commission form of government for the states necessarily requires reference to the commission and city-manager forms of government in municipalities; discussion of the mid-century movement for the direct election of judges and high state officials necessitates reference to the activity of county electorates. The truth is that the principle itself is unsound, and ought not to have been adopted at the start. State and local governments are parts of a common whole, and cannot be separated from each other even in thought. Legislators are elected by and represent their localities at the same time that legislative jurisdiction covers the state as a whole. A sheriff or district attorney, equally with a governor or attorney general, is an agent of the state. The circumstance that in spite of his being a state official he is locally elected, ought not to be dismissed with scant reference, as occurs under the general plan of this work. Quite the contrary, the tendency of officials whose jurisdiction is not state-wide to be chosen by the electors of their localities, rather than appointed from above, ought to be emphasized as one of the most significant peculiarities of the American state. Much that is otherwise inexplicable in the development of state government becomes clear when it is recognized that cities and counties are not extraneous phenomena, operating in some subordinate sphere, but are integral parts of an interlocking organization.

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And finally, there stands out as a third general defect of this volume—a defect arising, that is to say, out of what the author has tried to do rather than out of the way he has done it—that his attempt to describe forty-eight systems of state government at the same time has wrought havoc with his literary style. His principal reliance, as a means of covering his extensive field, is to make general statements, carefully qualified by such words as "most" or "usually." Thus on page 243 we read: "At present, therefore, in *most* states the *principal* differences in the character of the two houses result *chiefly* from differences in their size and in the manner of apportioning their members." This is doubtless a correct statement, but hardly a snappy one. Similar, if less extreme, instances of cautious expression may be found on almost every page. Credit must be given to the author for not sacrificing scholarly accuracy to rhetorical force. The cumulative effect of many such expressions, however, is not merely to impair the vigor of the author's style, but to make one wonder whether these pseudo-generalities really lead to much. Among the most interesting pages of the book, to one reader, were those which dealt with something comparatively anomalous rather than commonplace—the concrete description of the Massachusetts committee system.

These features of Professor Holcombe's work take it out of the rank of scholarly classics. He has not chosen a definite field, and covered it in such a way as to make a lasting contribution to knowledge. Unfortunately, he adopted a too-ambitious title, and then tried to live up to its demands. If he had entitled his volume "Contemporary Problems of State Government," and let it consist of loosely connected essays upon vital topics of the day, he would not have undergone the danger of disappointing his readers. For the real value of the book consists herein: It is part of the mechanism that Harvard has developed to train "useful and distinguished supporters of our free systems of government." It indicates how "the college man in politics" may be helped to wrestle intelligently with current propositions of political reform. It provides an arsenal of information that will greatly assist the realization of this aim. Whether as collateral reading for students or as a guide to the young instructor in organizing his course, it serves a patriotic purpose in a worthy way, and points to the day when the value of special training will be as generally recognized in practical politics as it already is in the legal profession. The circumstance that this volume suggests, without fulfilling, a different aim, should not be allowed to obscure its essential merits.

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Undeniably, even when considered from this point of view, errors or omissions can be found. Maryland's introduction of manhood suffrage as early as 1802 does not receive the notice it deserves. In connection with the theory of the suffrage, the formal admission of Connecticut and Rhode Island "freemen," by vote of those already enrolled as such, should have been considered. It is somewhat remarkable to find the grant of suffrage to aliens who have declared intention of becoming citizens treated as a restriction rather than as an extension of the electoral franchise. In his discussion of our early systems of government the author has gone somewhat astray. He seems not to have grasped the extent to which judicial, legislative and executive powers were blended in the colonial governor and council. Had he started his historical development with the institutions inherited by the Fathers, rather than with their theories as to abstract rights, he would have found it easy to explain why the doctrinaire symmetry of a tripartite division of powers has been impaired by such apparent anomalies as the power of the upper house to try impeachments, the power of the governor to pardon criminals and to veto legislation. He would not have stumbled into misleading statements, or worse, in describing the early judicial organization of Connecticut and Rhode Island, of New York and New Jersey. His otherwise excellent description of the mid-century movement for the direct election of state executives and judges is not entirely accurate as to dates and area affected. Although Mississippi started the idea in 1832, it was not until 1846 that a second state — New York — took it up. Thereafter the movement was by no means characteristically western nor did it affect all western states. It ran in parallel east and west streaks across the entire country. One could have wished also that the author had noted the development of irresponsible boards as administrative organs of the state. Reflection upon this curious attempt to take particular governmental functions "out of politics" might perhaps lead him to expand his illuminating formula of "revolt against legislative supremacy" into the broader generalization of "distrust of professional politicians."

All these are relatively minor flaws, however, such as anybody can pick in any piece of synthetic work. Against these must be set—merely to cite those portions of the volume which happen to have particularly appealed to one reader—the author's temperate discussion of the proper manner of selecting judges, his analysis of the growth of the executive veto, his helpful summary of the three waves of constitutional reform and of the causes that produced them; and,

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in particular, his careful treatment of the political party and of direct legislation. It is not easy to hew a path through the mass of formalism with which years of reforming zeal have encumbered the American state. To the task of bringing order out of chaos Professor Holcombe has brought an original and constructive mind, enthusiastic in the pursuit of truth. It is to be hoped that he will go farther.

One final reflection is suggested by this volume. If a democratic community must resign itself to the leadership of trained experts, its first impulse, at present, is to follow the empirically trained ward politician or rural wire-puller, rather than the theoretically better grounded college man. For regret it though we may, the college man suffers by being relatively out of touch with the mass of the population. The fact that he accomplishes as much in politics as he does is not due to any respect paid to him either as a social superior or as an educated man. Quite the contrary, he succeeds, when he does succeed, by overcoming initial suspicion and distrust. He succeeds by utilizing, not by capitalizing, his college training. The graduate of the university law school similarly competes with the product of other methods of training, but at least the presumption of superior merit is on his side. The presumption is distinctly against the college man who elects practical politics as his career. The reason for this distinction is perhaps that politics has not been considered a reputable profession like the law. The position which even a professional boss occupies is that of a necessary evil, a tolerated abuse. As for his competitor, the college man, as a rule he dares not admit that he is a professional, however clearly he may be one. He prefers to consider himself as dedicated to public service, which is well, and to parade the fact, which is not. We are prone to think the worse of him when we discover that political reform constitutes, after all, his means of livelihood. In short, our people, who have departed completely—perhaps too completely—from the theory of amateurism in the practice of the law — who have frankly abandoned the English pretense that a barrister may not demand a fee—who have seen their bar lose, along with such transparent shams, also some genuine idealism—are still profoundly under the influence of the theory of amateurism in politics. And because this is the case, it is only recently that our colleges have attempted to impart a practical tinge to their instruction in government. They have not been long enough at this task to receive, nor always to merit, public recognition and support. Their aloofness from the common herd is known and exaggerated. Their practical usefulness and broad sympathies are underestimated.

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One of the benefits that entrance into the Great War will bring to our country may possibly be in proving that the theory of amateurism in politics, in the extreme form in which that theory is held by our population today, does not work. Our healthy democratic distrust of professional experts, however trained, may have to yield something to the exigencies of efficient administration. Should this be the case, institutions which give systematic training in politics will have a more definite objective at which to aim. Our university departments of government will then have a better chance to duplicate the achievement of our universty law schools—to secure, namely, a recognized position in training for a recognized career. Our law schools also had their early struggles to persuade the public that any considerable education was needed before practice might begin; or that, if preliminary training were desirable, institutional work was worth as much as personal contact with a practitioner. Their success in finally establishing themselves against competing law offices, was due to the fact that from the beginning they looked upon the law as primarily a professional occupation, and organized their instruction from this point of view. What the law office was to the early American law school, the district club is to the college department of government today. It is encouraging to find that these departments are beginning to see where the solution of their problem lies, and that—as the present volume shows—they have started to vitalize their instruction.

ALFRED Z. REED.

CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING

The Primates of the Four Georges. By ALFRED W. ROWDEN. New York, E. P. Dutton and Company, 1916.—x, 430 pp.

There were eight Archbishops of Canterbury in the one hundred and twelve years from 1716 to 1828, the period covered in Mr. Rowden's book. The shortest of the primacies was that of Matthew Hutton, who was translated to the see of Canterbury in 1757, and died in the following year. The longest were those of John Moore and Charles Manners Sutton, who held the archiepiscopate for twenty-two and twenty-three years respectively—from 1783 to 1805, and from 1805 to 1828. William Wake, the first of the Georgian primates, was Archbishop of Canterbury for eleven years; John Potter, Thomas Herring, and Thomas Secker each held the highest office in the church for ten years, and Frederick Cornwallis, who preceded Moore, was primate for fifteen years.

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Mr. Rowden gives a brief account of the life and opinions of each of these eight archbishops, and sketches the policy followed by each in regard to his clergy and to the dissenters. Incidentally he gives some account also of the general condition of religion in England, and of the place held by the Established Church in the life of the people. He brings out the dependence of the clergy on lay patrons for preferment. He shows how churchmen desirous of high place in the church continually turned their eyes to the men in control of the government.

This unending scramble for preferment, dependent on the favor a man could win from king and politicians, worked against the building up of the Established Church, and hindered the formation of a hierarchy like that of the Roman Catholic Church. At the same time the bishops were themselves exceedingly powerful in the government of England. The House of Lords during this period was practically dominated by lords spiritual, and no bill could pass against their opposition.

There were wide differences in the character and policy of the Georgian primates. Several were from aristocratic families, especially Frederick Cornwallis and Charles Manners Sutton. Most were men of good family and education; but one, Thomas Secker, was a dissenter; and one, John Potter, rose by his own exertions from the lower middle class, being the son of a linen draper. Potter was always conscious of his humble origin. His consequent air of stiffness and importance led to the charge that his preferment had turned his head. Keen to advance the fortunes of his family, he took advantage of his position to acquire what in those days was great wealth, leaving about $400,000. His disposal by will of his archiepiscopal right to certain patronage led to two lawsuits and an unseemly scramble for church livings. With all his faults, Potter was superior in character to Thomas Herring, the second archbishop selected by George II. Potter was a student and a man of ability, diligent in performing the duties of his office. He left behind him some fairly creditable writings. Herring had no particular ability, and his best energies were directed toward the suppression of "enthusiasm" as embodied in the Methodist movement and the activity of the Quakers.

Whether any other method of church government would have produced better results it is impossible to say; but a reading of Mr. Rowden's book certainly leaves the impression that the chief concern of churchmen in the eighteenth and early nineteenth centuries was far from being the good of the people or their religious welfare.

ANNIE G. PORRITT.

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Lord Granville Leveson Gower (First Earl Granville), Private Correspondence: 1781—1821. Edited by his Daughter-in-Law, CASTALIA COUNTESS GRANVILLE. New York, E. P. Dutton and Company, 1916.—Two volumes: xxviii, 510; ix, 597 pp.

In the entire range of English biography and political and social letters, from the Revolution of 1688 to the beginning of the reign of Queen Victoria, it would be difficult to name a book, outside the publications of the Historical Manuscripts Commission, which more fully and completely pictures the life of the English governing class than the private correspondence of Lord Granville Leveson Gower. The letters were prepared for the press by the Countess of Granville, widow of the Earl of Granville, who is best remembered for his long leadership of the Liberal party in the House of Lords.

One of several features distinguishing these volumes from other books of the same class is the period they cover—1781 to 1821. Another is that, unlike most books from which it is possible to follow the political and official interests and activities of the old governing class, both political parties are about equally represented in the letters which fill these eleven hundred pages. A third distinguishing feature is that most of the letters, and unquestionably the most interesting of them, were written by a woman. They were written by the Countess of Bessborough, who from this publication of her remarkable series of intimate letters—personal, social and political—to the first Earl of Granville, will rank with Lady Mary Wortley Montagu, with the Countess of Westmoreland, and with the Countess of Russell among women of the eighteenth and nineteenth centuries whose letters are of distinct value to the student of English political history.

The period covered by the correspondence is noteworthy for two reasons. The governing class in England was at the height of its power from the American Revolution to the Reform Act of 1832. It never had easier control of the House of Commons, nor a greater command of the prizes in the service of state and church than in this half century. Moreover, in the middle years of this period England was involved in the long wars with the French Republic and with Napoleon.

Both divisions of the governing class come into these pages. Granville Leveson Gower, to whom nine-tenths of the letters were written, was in politics closely associated with Pitt, Canning and Castlereagh; while the Countess of Bessborough, who was a daughter of Earl Spencer, was through her sister, the Duchess of Devonshire, closely associated with the Prince of Wales, and with Fox, Grey, Holland, Sheridan and other prominent members of the Whig opposition.

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The countess was as well-informed in contemporary politics, and as well-read in English history and general literature, as any of the leaders of either political party. Her genius for politics, it would seem, surpassed that of any woman of the governing class of her time. She took politics seriously—quite as seriously as any of the men with whom she was in contact. Obviously also she enjoyed writing on politics, and wrote remarkably well.

In these volumes there are interesting letters from Lady Stafford, mother of Leveson Gower, full of politics, like those of Lady Bessborough. There are also many letters from Leveson Gower, who was in the House of Commons from 1795 to 1815, and who in 1804–6 and in 1807 was entrusted with important diplomatic missions to St. Petersburg arising out of the war. Numerous hitherto unpublished letters from Pitt and Canning, and from Fox, Grey and Sheridan are also included. But it is the letters from Lady Bessborough, written with such frequency, and with such freedom and detail, to Leveson Gower in the years from 1794 to 1821, that give these volumes their interest and importance.

There were periods in the twenty-seven years when Lady Bessborough wrote daily. The friendship between the two—Lady Bessborough, a married woman with three children, and Leveson Gower, who was not married until sixteen or seventeen years after the correspondence began —would today be regarded as extraordinary, and open to much unfavorable comment. But as the whole correspondence shows, the social and moral standards of the governing class of 1781–1821 were by no means those of Victorian England; and one incidental value of this correspondence is that it makes it possible to measure the change for the better in these matters in the last hundred years.

At the present time, when the world is convulsed with a great war in which England has everything at stake, these Bessborough letters are of much immediate interest because they register the varying moods of the English people during the long wars with France. Almost every mood and every popular feeling of those dark years is reflected.

The more permanent interest of the letters lies in the politics of the years from 1794 to the end of the reign of George III. They describe elections in progress; the worries and uneasiness of borough-mongering and electioneering in the counties; the consideration and advantages accruing to a man of the governing class at Westminster and Whitehall from success in what Lady Bessborough described as "electioneering jockeyship;" and also the disagreeable position in the House of Commons of men who owed their places to the men engaged in the bossing of boroughs and the control of county constituencies.

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The letters also go with much detail into the composition and reorganization of cabinets and administrations. The last days of Pitt and Fox are described with more care and detail than in any of the biographies of these statesmen. Canning, Castlereagh, and Sheridan—Sheridan in particular—frequently appear in much less favorable light than that in which they have hitherto appeared.

The years covered by the whole of the Leveson Gower correspondence are the first thirty-five or forty years of the industrial era. They were years in which manufacturers were acquiring new wealth and new social and political importance. They were years of extreme hardship for the wage-earning and laboring population of England, partly because of the exploitation of labor in the new era of manufacturing and commerce, and partly because of the virtual conscription of men for the army and navy during the French wars. But the governing class portrayed in Lady Bessborough's letters lived quite aloof from either manufacturers or laboring people. Their only interest in these people was at election times. Much of the wealth of the Leveson Gower family accrued from mines, blast furnaces and canals; but all that there is in these eleven hundred pages concerning people in England not of the governing class—all that there is about manufacturers, traders and wage-earners—could be written on a postcard.

EDWARD PORRITT.

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Essai sur les Origines de la Chambre des Communes. By D. PASQUET. Paris, Armand Colin, 1914.—271 pp.

M. Pasquet's essay is an excellent survey of the development that led to the formation of the House of Commons in the fourteenth century. While the author is much indebted to the writings of Bémont, Riess, Stubbs, Ramsay and Maitland, which deal with early parliamentary history, he does not slavishly follow these authorities. He has considered also the recent researches of McKechnie, Adams, Baldwin and Jenkinson; it is therefore somewhat surprising that he takes no notice of Round's essay on "The Origin of the House of Lords" (*Peerage and Pedigree*, volume i, pages 324-362), and McElwain's *High Cost of Parliament and its Supremacy*, for these writings throw new light on certain matters treated by M. Pasquet. While the essay is a summary account of the development, it possesses nevertheless the liveliness and interest that come only from first-hand acquaintance with original materials. Nearly every page proves that the author is at home among the collections of sources, such as the

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Fœdera, Brocton's *Note Book*, the *Rotuli Parliamentorum*, the *Parliamentary Writs*, and the *Statutes of the Realm*. The essay is no mere condensation of the results attained by previous writers; it is a fresh examination of the leading materials by the author himself in the light of present-day scholarship. The attention paid to the writs for Edward I's Easter Parliament of 1275 (see, *e. g.*, pages 73, 74, 87 *et seq.*, 148), so recently discovered by Mr. Jenkinson (see his paper on "The First Parliament of Edward I," *English Historical Review*, April 1910), is an illustration of this feature of M. Pasquet's work.

The introductory chapter (pages 1-16) deals with the problem of the *curia regis*. In chapter ii (pages 17-83) the author reviews *Les Convocations des Deputés des "Communes" jusqu'en 1265*. Chapter iii (pages 84-147) sketches the history of Edward I's parliaments, while the fourth chapter (pages 138-178) is especially concerned with the composition of parliament in the time of Edward I. In chapter v (pages 179-257), which is in some respects the most interesting and instructive part of the volume, the author considers the reasons that led to the summoning of representatives of towns and cities. The essay closes with a short chapter (pages 259-267) in which the author states the chief results of his inquiry.

Among the special subjects considered by M. Pasquet, attention may be drawn to the distinction between the large and the small *curia regis* (page 7 *et seq.*), the early parliaments in their judicial aspect (see, *e. g.*, page 33 *et seq.*), the possible influence of representation in parliamentary assemblies (page 23 *et seq.*), Simon de Montfort's statesmanship in its relation to parliamentary history (page 60 *et seq.*), and the political history of Edward I's reign in its relation to the origin of the House of Commons (chapters iii-v).

M. Pasquet's main thesis is that Edward I's policy was directed towards the growth of royal power at the expense of feudal elements in the constitution. Representation of the towns and counties in parliament was not the result of a movement directed against royal power; it was the result of the king's own policy to increase his authority by becoming the sovereign lord of all his subjects and not merely remaining the feudal over-lord (see, *e. g.*, page 259-267). This view is summarized by the author in the following passage:

> On se répresente ordinairement la fondation de la Chambre des Communes comme étant le dernier terme d'un mouvement qui aurait commencé avec la Grande Charte et se serait continué par les Provisions d'Oxford et la convocation du grand Parlement de 1265, pour se termin-

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er par la réunion du Parlement "modèle" de 1295. Cette évolution aurait été déterminée par l'alliance de la noblesse et de la bourgeoisie, qui auraient fait cause commune contre une royauté trop puissante et qui seraient parvenues á limiter le pouvoir du roi. Mais l'étude des documents nous conduit à des conclusions toutes differentes: ce n'est pas la nation qui demande à être représentée dans le Parlement du roi, c'est le roi qui impose à ses sujets l'obligation de se faire représenter à son Parlement.

Ce n'est pas pour associer la nation tout entière au gouvernement de l'Etat, mais pour fortifier le pouvoir royal, qu'Edouard Ier a fait une coutume de ce qui n'avait été jusque-là qu'une exception. Il ne convoque les représentants des Communes que lorsque cette convocation lui paraît utile à ses intérêts; bien souvent les affaires les plus importantes sont traitées en leur absence. . . . Enfin, la convocation des représentants des comtés et des villes correspond à une des idées fondamentales de la politique d'Edouard Ier. Dans le Parlement, tel qu'il l'a conçu, la vieille distinction féodale entre les vassaux et les arrière-vassaux se trouve entièrement oblitérée; le roi n'a plus devant lui que des sujets. Sous des formes féodales, la convocation des Communes est une mesure essentiellement anti-féodale, dont l'objet est d'établir une centralisation plus forte et de soumettre tous les habitants du royaume, quel que soit leur rang dans le hiérarchie féodale, à l'autorité directe du souverain. Par là, Edouard Ier se révèle comme le continuateur de la politique de Henri II et comme l'émule de Philippe le Bel [pages 261–263].

The Statute of Wales (1284) illustrates also this general policy of Edward I in distinguishing clearly between the king's feudal overlordship and the full political sovereignty over Wales which he acquired by the conquest (see Bowen, *Statutes of Wales*, pages xxxi, xxxii, 2; Pollock, *Expansion of the Common Law*, page 61). But the policy of augmenting the royal power did not altogether achieve the results which Edward I designed. M. Pasquet says,

Mais les desseins d'Edouard Ier ne se sont pas réalisés, ou plutôt ne se sont réalisés qu'en partie. La convocation des représentants des comtés et des villes a bien eu pour résultat d'achever rapidement la destruction du régime de la vassalité; elle n'a pas abouti à augmenter le pouvoir du souverain, comme l'avait espéré Edouard Ier [page 263].

The learning and skill which M. Pasquet has devoted to the period down to the death of Edward I will now be spent, we may hope, upon the latest medieval development of Parliament. The success of the present essay should encourage the author to undertake this larger task.

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Jeffersonian Democracy in New England. By WILLIAM A. ROBINSON. New Haven, Yale University Press, 1916.—vi, 179 pp.

Thomas Jefferson attached immense importance to the progress of his democratic propaganda in New England. He watched every development with jealous interest, and his correspondence during the decade between the triumph of the Hamiltonian system of finance in Congress and his own elevation to the presidency is filled with optimistic predictions of the "change of sentiment to the eastward." When president he chose three of his six intimate advisers from New England. During the struggle over the embargo he "felt the ground shaken under his feet by the power of the New England town meeting." He exulted over the "restoration" of the little state of Rhode Island when it was captured by the Republicans, as over a lost sheep returned to the fold.

In fact, he admired the political institutions of New England with their devolution of authority on the towns, and quite frankly made them his model in the days of the Continental Congress and in his work for the reformation of the law code of Virginia. But his admiration turned to sorrow and chagrin when New England fell under the spell of Hamilton's genius and became the stronghold of Federalism. A narrow clique of aristocratic families dominated its politics in the "unrepublican ascendency" which made them "regard any opposition as actual rebellion against the reigning powers." Federalist governors were elected year after year by a mere fraction of the legal voters; Chittenden serving seventeen years in Vermont, Fenner and Gilman fourteen years in Rhode Island and New Hampshire, respectively, Strong and Trumbull eleven years in Massachusetts and Connecticut. The Federalists of New England boasted freedom from the electioneering disorders of Pennsylvania and the South. The clergy, always influential in New England, threw all their weight on the Federalist side, branding the Republicans as a godless rabble who were poisoned by the atheistic teachings of the French Jacobins, while the wealthy merchants and lawyers of New England, absorbing two-fifths of the nation's disbursements on the public debt, were the backbone of the support of the Hamiltonian system. This perverted New England was for Jefferson a land to be redeemed. It must be restored to the democracy of Samuel Adams and James Otis, reborn to the spirit of 1776.

It is strange, in view of the place which this work occupied in the mind of Jefferson, that no systematic study of the progress of Repub-

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licanism in New England had been made before the appearance of Professor Robinson's essay; for the material in Henry Adams and McMaster is only incidental and fragmentary. Professor Robinson has exploited a vast amount of material in the archives of antiquarian and historical societies in New England, together with more than a score of files of newspapers and periodicals, besides diaries, letters and papers of leading New England politicians on both sides. He discusses in a preliminary chapter the conditions, social and political, in New England, against which the Republican propaganda had to make head, then treats the fortunes of Republicanism in each of the eastern states during the period from Jefferson's accession to the vice-presidency in 1797 to the close of the second war with England in 1815. From feeble beginnings in the closing years of the eighteenth century, the Republican party multiplied rapidly during the first term of Jefferson's presidency, capturing the electoral vote of every New England state except Connecticut for Jefferson in 1804. The Embargo and Non-Intercourse Acts of Jefferson's second term brought a reaction to Federalism, but a Federalism narrow, intransigent, desperate, which ended in the treasonable Hartford Convention and the complete discrediting of the once triumphant party.

Professor Robinson develops his subject with a great wealth of lively illustrative material, his quotations from the bewildering mass of papers which he has consulted being particularly well chosen. His narrative also emphasizes a number of important points which have had scant treatment in the general histories of the period; for example, the political status of the District of Maine and its influence on Massachusetts proper (pages 42-46, 94), the discussion of the caucus in New England (page 56 *et seq.*), and especially the interaction of Republican politics and religious dissent (pages 128-150). The work would have gained somewhat in orderliness had the author not interrupted his story of the growth of Republicanism through the three epochs outlined, by a chapter on "Party Methods." Chapter v, on the "Federalist Reaction of 1807-1815," should have followed directly chapter iii on the "Growth of Republicanism from 1800 to 1807; and chapters iv and vi, on the "Methods and Principles of Party Division," should have come after the historical narrative. There is also a tendency to an unpleasant schematization in the treatment of each state in each period in its respective development in local and national affairs; and statistics at points burden the memory too sorely. But the value of the subject-matter always atones for these shortcomings in form.

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There is little to criticize unfavorably in the scholarship of the essay. We doubt whether the author is justified in speaking of the "satisfactory operation" of the Jay Treaty in Adams' administration (page 15), while the awards had not yet been made for damages to American shipping, and the Republicans were insisting that Great Britain showed no sign of respecting our sailors' rights. The twice-repeated assertion that internal dissensions "weakened" the Federalist party in 1800 (pages 23, 32) can hardly be substantiated in view of the figures which Professor Beard has furnished in his *Economic Foundations of Jeffersonian Democracy* to prove that it was no defection from the Federalist vote but a great new Republican vote that elected Jefferson. It was rather the Peace of Lunéville in 1801 than the Peace of Amiens in 1802 that "ended for a short time hostilities in Europe" (page 78). And it was the measures of Jefferson's second administration, not of his first, that were "hostile to the New England interests" (page 152). It would have been a welcome addition to the book if the author had reproduced Libby's map on the *Geographical Distribution of the Vote on the Federal Constitution*, to which he refers on page 170, for comparison with his instructive maps on the distribution of party votes in New England in the years 1797, 1802 and 1807.

Professor Robinson has given us a valuable contribution to the history of the Jeffersonian period, not the least merit of which is the demonstration of the influence of Jeffersonian democracy in New England on the creation of a national sentiment of union.

D. S. MUZZEY.

Criminality and Economic Conditions. By WILLIAM ADRIAN BONGER. Translated from the French by HENRY P. HORTON, with an editorial preface by EDWARD LINDSEY, and an Introduction by FRANK H. NORCROSS. Boston, Little, Brown, and Company, 1916. —xxx, 706 pp.

This is another of the excellent volumes in the Modern Criminal Science Series being translated and issued under the auspices of the American Institute of Criminal Law and Criminology. Like most of the others it represents a distinctive point of view and throws light on many aspects of criminology other than that indicated by the title. Justice Norcross calls it "the nearest approach to an exhaustive treatment of the question of the agencies productive of crime which has thus far been published in this country." The book is in fact a veritable

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encyclopedia both of literature and of facts. It is broad and judicial in tone—there are 850 titles in the bibliography—and yet the entire treatment is designed to bear out the thesis that the causes of crime are to be found exclusively in the existing capitalistic system of industry. It is undoubtedly one of the most effective arguments for the economic interpretation of social life that has appeared in the English language.

An enormous amount of literature is examined in part i for the purpose of bringing together a summary of all existing views with reference to the importance of economic—and incidentally of other—factors in the production of crime and criminals. The classifications of authors are convenient rather than exclusive. A vast mass of data is presented in these 246 pages designed to show that there is a concurrent movement of economic conditions and such indices of criminality as vagrancy, mendicity, recidivism, alcoholism, offenses against the common law, theft, fraud and embezzlement. That there is a synchronous ebb and flow of economic life and criminality cannot well be doubted, and an important causal connection is thus established. But even in times of greatest prosperity there is a considerable volume of crime; and on the whole the variations in the number of crimes as prosperity fluctuates are small compared with the total body of crimes. Taken by and large, therefore, the mass of crimes at any time and place must be explained by factors that are relatively constant, distinguishable from the pulsations of trade and commerce, and connected with the relatively permanent aspects of the social organization. As shown by subsequent chapters the author would assent to this and contend that the ultimate conditioning factor is the economic system which dominates all other aspects of social life. But, while we must agree with the contention made here and throughout the book that there are crimes due to poverty and crimes due to wealth and idleness, yet it is patent that nowhere does the author give sufficient consideration to the fact that the great majority of those who live either in want or in wealth do not commit such breaches of the law as involve them in the criminal records.

The author's extensive survey of the literature of the subject is only preliminary to the presentation of his thesis. The first book of part ii is devoted to "The Present Economic System and Its Consequences" (30 pages) and the second to "Criminality" (290 pages). The viewpoint is thus indicated: "The theory of Marx and Engels results in our having a method of investigation already marked out" (page 246). Marxian economics is outlined (pages 247–262) and its theorems are accepted in the same unquestioning spirit in which one is now compelled to accept the doctrine of the infallibility of our government in

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the conduct of the war. There is something almost tragic in the completeness with which orthodox socialists, who boast loudly and disdainfully of having achieved intellectual emancipation, commit themselves with abject mental servility to a set of dogmas to be held even more inviolate than the ones they have discarded.

The treatment of the "Social Condition of the Different Classes," "The Relation of the Sexes and of the Family," and "Alcoholism," (pages 263–373) is by far the best part of the entire work. It must be said however that the author is very uncritical in his use of statistical tables. Nowhere in these does he make any effort to separate the influence of heredity from that of the obvious social environment. Poverty may be clearly connected with a crime, but poverty itself may be the result of hereditary incapacity which has existed, as in the case of the Jukes, for generations. The remedy, then, would be, not the transfer of ownership from private to state control, however beneficial this might conceivably be, but segregation. The author apparently does not even glimpse the enormous difficulties in the way of dissecting the gnarled knots of hereditary and social factors. He nowhere attempts to measure the force of hereditary predispositions when social factors are made fairly comparable; he nowhere traces cases through a series of generations to note the reappearance of similar defects, or to note the extent to which the unfavorable surroundings of children are due to the inherent indolence, instability or defect of parents, or to observe the frequency with which under very similar environments some families move up as a result of superior energy and thrift and others move down from a lack of these traits, even when a fairly good start in life is had.

It is in these chapters that one gets the meat of the volume, for in subsequent chapters on "General Considerations," "Economic Crimes," "Sexual Crimes," "Crimes of Vengeance and Other Motives," "Political Crimes," and "Pathological Crimes," the author falls back on the reasoning here presented. One will search long for a better statement of how the present status of labor with its poverty, dreary surroundings, ignorance and dwarfed personalities, drives the working man and woman to alcoholism, excessive sensuality, and prostitution, and how all these practices favor the commission of crime. Even the crimes of the rich are due to their luxury and lack of serious occupation. The thesis here supported may be stated in the well-known phrases of Quetelet,

> The crimes that are annually committed seem to be a necessary result of our social organization. It is society that prepares the crime, and the guilty

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is only the instrument by which it is accomplished. There is a budget which we pay with a frightful regularity; it is that of prisons, chains and the scaffold [*Sur l'Homme*, 1835].

Only, while Quetelet's proposition leaves a place for persistent biological elements, our author would explain all as due to the capitalistic system of industry.

His viewpoint is strikingly like that of the Belgian statistician, however. Thus it is a fundamental principle with him that one must center attention on crime as a mass phenomenon and remain utterly oblivious as to the particular individuals involved. Then since the competitive system of production so largely explains all features of the established social system, it is the adequate explanation of modern crime. M. Bonger admits that individuals differ (see especially "Individual Differences," pages 534–5), but holds that the task of criminal sociology is to explain why individuals who admittedly "as a consequence of their innate qualities run more *danger* than others of becoming criminals, *actually* become so" (page 535). One could say with equal force that the task of criminal sociology is to explain why among persons living in similar economic conditions, where all are in *danger* of becoming criminals a few *actually* become such, but most do not. While at times nearly admitting the claims of heredity he usually excludes them in the manner just indicated or else explains them away as on the whole due to the cumulative effects of poverty and accompanying evils. He thus often begs the question, or assumes the inheritance of acquired characteristics, or falls into complete absurdity. Thus:

> When two persons of different height are fording a river, and the shorter steps into a hole and is drowned, should we have the right to say that the difference between the height of persons is one of the reasons why people are drowned? I think not. The only reason why there are people who are drowned is that a man cannot live in water—which in no way excludes the fact that a short person runs more danger of drowning than a tall one [page 349].

Sexual crimes are explained by poverty preventing early marriage, the inferior status of woman, alcoholism, and the lack of civilization among the lower strata of society, though variations in temperature may aggravate them; but differences in sex instinct or self-control only render some persons more liable than others. The folly of trying to make one coat fit all manner of persons and conditions is nowhere better shown than in the proposition that adultery is due to the present eco-

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nomic system which requires monogamy and difficult divorce. We thus apparently have two alternatives. We may reduce this crime to the vanishing point by authorizing divorce at pleasure of either party or by abolishing the legal requirement of monogamy. The latter probably would be the only effective method. One cannot help wondering how the capitalistic system of some of the Old Testament fathers differed from our own! Moreover would it not be an easy way to remove all criminality, to abolish all laws which constitute restraints upon our instincts and predispositions? Those who are in special danger would thus be relieved of all risk, though in all probability short persons would still be more likely to drown than tall ones.

But in spite of this defect of too exclusive emphasis on one set of factors, the author has presented a truly impressive case. The distribution of opportunity as measured in terms of property and income is badly skewed in comparison with the distribution of inherent abilities; and it is difficult to exaggerate the power of social and economic advantages once obtained to perpetuate themselves. But while fully agreeing that it is of prime necessity to spread the advantages of civilization to the lower ranks, yet it seems at least equally necessary to perfect the inherent qualities of the human breed.

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Societal Evolution; A Study of the Evolutionary Basis of Society. By ALBERT GALLOWAY KELLER. New York, The Macmillan Company, 1915.—xi, 338 pp.

Darwinism has been epidemic for fifty years, and social philosophers and dilettante students of human affairs have been highly susceptible to infection. To resolve the complexity of the social process into the Darwinian formula of evolution has been for some time a pleasing escape from the tedium of scientific method. The poetical asininities of Nietzsche, revaluating all values by a misinterpretation of natural selection; the fantastic dogmatism of Benjamin Kidd, distorting biological formulae to fit them to social progress; the almost hysterical insistence of the Galton-Pearson school upon race-stock degeneracy through social impediments to natural selection, all bear witness to the infectiousness of Darwin's theories and the extent to which imitations are refracted by their media.

Professor Keller, seeking an evolutionary basis for the folkways and mores as described by Sumner, can claim originality on one count. Other Neo-Darwinians admit that the extension of their master's theories

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to the social domain necessitates modifications and additions. Professor Keller disdains this cowardly compromise. Organic and societal evolution are not merely analogous; they are identical. The factors of one are the factors of the other. The determinative processes are the same in both cases. This is the major thesis to which Professor Keller devotes three hundred well-written pages.

To establish the identity of two complexes, it is necessary to know the composition of each. There is no mistaking the kinds of things which Professor Keller groups under the caption "societal evolution." If there were, we could re-read Sumner's *Folkways*. But it is still necessary to ask, what is organic evolution? Professor Keller goes back to Darwin and Huxley—to the "mint"—for his reply. While condemning other sociologists for confusing evolution with Spencer, he manifests a lamentable indifference to fifty years of biological research by identifying evolution with Darwin.

The problem is not so easily solved. The Darwinian formula of evolution through the selection and hereditary perpetuation of adaptive variates remains indeed an imposing and fruitful hypothesis; but since 1859 there has been a prodigious amount of biological investigation. Professor Keller refers parenthetically to Weismann and De Vries, but does not seem even superficially cognizant of the fact that the former relegated Darwin's explanation of transmission to the scrap-heap of discarded hypotheses, while the mutation theory of the latter materially modifies the central idea of Darwinism. Biologists are still seeking the factors of variation; the relative potency of natural selection and mutasion in the evolutionary process has not been determined; and the mechanism of heredity is still a mystery, despite the stalwart *credos* of Mendelism.

Undismayed by the clamorous dissension of biologists, Professor Keller is content to rest his case upon the possibility of applying Darwin's terminology to Sumner's folkways and mores. This sort of logic carries one dangerously near the outposts of nonsense. Variation, selection, transmission, and adaptation are not "evolutionary factors;" they are merely names which summarize vast complexes of factors. Behind each term are intricate processes as yet but dimly perceived and partly understood. Professor Keller would have us believe that adaptation of the mores to environing conditions is *a priori* evidence of the presence of the other evolutionary factors, and establishes forthwith the identity of organic and societal evolution. But adaptation is universal. In the last analysis, it is simply the mathematical composition of all the coincident forces. It proves only the indestructibility of matter and energy.

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Most of Professor Keller's book is dedicated to the task of proving that societal variation, selection, transmission and adaptation are actually the same things as their organic homologues. Variation is variation, no matter where, when or how it occurs. Moreover, societal variation reduces ultimately to the mental reactions of individuals. Concurrences of mental reactions are folkways; sanctioned and standardized they become mores. Differences in the mores probably go back to physical changes in the individual brain and "so root in organic processes." Why break the train of thought precipitously at this point? Organic processes probably root in chemical equations. The ultimate identity of the subject matter of all science is generally conceded. Sociologists do not claim autonomy for their science on the ground that collective behavior is independent of biological processes, but rather upon the ground that social causation comprises more than the biological factors and more than biological terms can convey.

Professor Keller's book itself furnishes evidence in support of this truth. The lengthy chapters on selection prove nothing so clearly as the utter dissimilarity of the facts and forces described from biological facts and forces. While admiring the lucidity of Professor Keller's presentation, we marvel at the intellectual naiveté that can see in the automatic and rational elimination of some mental concurrences and the preservation of others, a process identical with that which Darwin metaphorically described as natural selection. That there is a sort of selection in both cases, no one will deny; that this vague similarity establishes an identity, few will be willing to admit. To identify the general end-results of two processes does not identify the processes themselves.

Apparently inspired by the grotesque altruism of supplying his opponents with ammunition, Professor Keller interpolates a chapter on counter-selection, designed to prove that the survival of traits and characters biologically unfavorable is a normal part of societal evolution. The factors and results of this survival of the unfittest are admittedly antithetical to those of natural selection, yet we are asked to believe that this fact clinches the argument. It does.

Variation, selection and adaptation in the mores may be vaguely analogous to the phenomena similarly denoted in the organic domain. Intellectual honesty forbids even this concession in the case of transmission. One may be pardoned a slight intolerance of Professor Keller's treatment of this topic. For seventy years or more biologists have grappled with the problem of heredity. It is probable that the contributions of Lamarck, Darwin, Weismann, De Vries, Bateson, Johannsen, Nägeli, Mendel and Morgan will eventually be synthesized into a solution of that

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problem. Dogmatizing is always scientifically unbecoming and as yet premature, but there are some facts about heredity that have attained the certainty and precision of scientific truths. We are quite sure that the hereditary process is the supremely important factor in organic evolution; we are equally sure that the hereditary relation includes both the tendency to persist and the tendency to diverge. To say, as does Professor Keller, that heredity means the preservation of type, is to evince a sophomoric negligence of easily accessible bibliographies. To see in the perpetuation of the mores through education and unconscious imitation anything even remotely analogous to the hereditary process, one must be afflicted with a pathological hypertrophy of the imagination.

Professor Keller's book has to be judged by the validity of its major thesis; for the subject-matter is old and the topics discussed have been just as adequately treated by other sociologists. Judgment on this basis cannot assign *Societal Evolution* an important place in sociological theory. The author has written about the mores with clearness and charm. His protest against the complacent disregard of the mores by radical eugenists and other "world-beatifiers" is timely. But the attempt to identify organic and societal evolution by describing the mores in four biological terms gives a deceptive simplicity to a process that is explicable only in terms of a vast multiplicity of factors.

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COLUMBIA UNIVERSITY.

Social Rule. By ELSIE CLEWS PARSONS. New York, G. P. Putnam's Sons, 1916.—185 pp.

What is the explanation of social customs? Why are they given such blind devotion? Why do we hold to them so tenaciously? Why are they so compulsory? These and many other questions are now being asked by sociologists about a phenomenon that once seemed so simple, so obvious, so a part of our everyday lives that it was thought not to be a fit subject for scientific inquiry. Customs are now known to be far from simple. Analysis, so far, has been the method of approach to their solution. Customs have been analyzed as agencies of social control and of social pressure and have been seen as a result of natural selection based on group survival. They have also been accounted for on the basis of imitation. Others have likened customs to personal habit in that they reduce certain acts to the level of the automatic, thus leaving attention free for more urgent social problems. In this sense they expedite social action. Mrs. Parsons in this book makes an important addition to the list of explanations.

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Customs are seen as rationalized will-to-power. For instance, customs of instructing children are in large part explained as a vehicle for the elder's will-to-power. Such customs contain two elements, the love of power and the desire to do the right thing by the child. The question is, how wide-spread and how important is the first element, and how genuine or else how far a product of rationalization is the second element. That our true motives are often obscured through rationalizations acceptable to social standards, is being made quite plain by recent researches of abnormal psychology. In fact, psycho-analysis shows us that motives are rationalized to an enormous extent. If rationalizations are so common among individuals, then it is an almost obvious corollary that this rationalizing tendency works itself out in social movements and customs. Mrs. Parsons is one of the first to show these rationalizations in the social field. And this she has done in a very novel and brilliant way as even a cursory examination of her work will show.

Her book is a first approximation, as the mathematicians say. She has not attempted to measure the amount of will-to-power and rationalization in a particular custom after the fashion of the psycho-analysts. Indeed this would be well-nigh impossible. But she has amassed two hundred pages of very plausible illustrations from various fields, customs relating to women, children, servants, slaves, wage-earners, "backward" peoples, delinquents, defectives and many other social classes. These customs certainly seem convenient vehicles for the expression of the will-to-power. The result is scientifically convincing. When dice are rolled many times and the distribution of the results is noted, it can be told whether the dice are loaded or whether they follow the laws of chance. Although the calculus of probabilities for customs has not been worked out, yet such an amassing of plausible illustration as is contained in this volume seems to establish a high degree of probability for the thesis. There does seem to be a correlation between the social categories and media for gratification of the will-to-power. Mrs. Parsons remarks, "Classification is nine-tenths of subjection."

Granting that social categories may be, and probably are, used for the expression of power, it does not follow that social categories are caused specifically by the will-to-power. The causal factors may be others, the customs being simply associated with or used by the will-to-power. This problem Mrs. Parsons is not attempting to solve. But science does want to know what are the causes of customs and what are the relations of the will-to-power to the other explanatory factors listed in the first paragraph of this review.

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The author engages in some interesting speculation in the closing chapter. She is much interested in the liberty that comes to personality through a loosening of the social categories. When personality is freed from the bonds of social categories the will-to-power may find various outlets, one of which is science. The very act of mastering data gratifies the will-to-power. "It is not surprising that '*comprendre c'est pardonner.*' We pardon because in understanding we have found another outlet for our thwarted will; the outlet of punishing is superfluous." Mrs. Parsons also warns against the unrestrained will-to-power of the social reformer; with new categories he will, if unrestrained, re-victimize certain social classes. "The tyranny of traditional morality might be insignificant compared with that of the morality of eugenics," a tyranny that will of course be rationalized.

WILLIAM F. OGBURN.

UNIVERSITY OF WASHINGTON.

Rest Days. By HUTTON WEBSTER. New York, The Macmillan Company, 1916.—xiv, 325 pp.

This work comes from a scholar whose previous publications have demonstrated his competence to carry on research in both primitive and antique culture. The subject-matter of the present monograph is about equally divided between these two fields. The method pursued is that of the comparative school, tempered with a certain respect for the exact methodology of the critical ethnologists. Like the author's previous volume on *Primitive Secret Societies*, the present work, from a methodological point of view, stands about midway between the extreme comparative school represented by a volume of Frazer's *Golden Bough* and those models of critical ethnological method which have been produced in recent years by such writers as Boas, Rivers, Goldenweiser, Lowie and Ehrenreich. It is unfortunate that space does not allow a detailed criticism of the methodology involved, as it is the only serious defect in the work. Fortunately, the nature of the topic investigated renders these faults external rather than vital defects, and the work gives evidence of a very considerable erudition and of remarkable industry.

The title, "Rest Days," which would seem to indicate a primary interest in a comparative study of "sabbatarian" regulations, hardly gives an adequate conception of the comprehensive nature of the illustrative material contained in the volume, which is, in reality, a study of tabooed days of every sort and of the relation of these

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tabooed periods to the origin and development of the calendar. The successive chapters deal with: "Tabooed Days at Critical Epochs," "Tabooed Days after Death," "Holy Days," "Market Days," "Lunar Superstitions and Festivals," "Lunar Calendars and the Week," "The Babylonian Evil Days and the Shabattum," "The Hebrew Sabbath," and "Unlucky Days." The thesis which is maintained in regard to the origin of these tabooed periods, and which is sustained by a convincing mass of illustrative material, is that they rarely arise from considerations of practical utility, but are rooted in the reactions of the primitive peoples to the mysterious and unusual features of their experience. In other words, the taboos are a means through which the primitive man deals successfully with those experiences and occurrences which are charged with *mana*.

Dr. Webster successfully controverts the theory that the Hebrew Sabbath was derived directly from the worship of Saturn or through an imitation of Babylonian or Egyptian practices. He finds that, in its earliest signification, the Hebrew Sabbath designated the day of the full moon on the fourteenth or fifteenth of each lunar month. On this full-moon day, or the *Sabbath*, there occurred at certain times important religious festivals during which servile labor was suspended. At a later period, probably before the time of Ezekiel, the seven-day week had evolved and the term Sabbath was applied to the seventh day. While granting its psychic and cultural affinity with allied customs elsewhere, Dr. Webster contends that the Hebrew Sabbath was unique and original as regards details. "To dissever the week from the lunar month, to employ it as a recognized calendrical unit, and to fix upon one day of that week for the exercises of religion were momentous innovations, which, until evidence to the contrary is found, must be attributed to the Hebrew people alone." The restrictions upon labor on the Sabbath day were originally probably a result of the practical necessities of an agricultural people and of the taboos earlier connected with the new and full-moon days. The later refinements in "sabbatarian" regulations resulted from the "exaggerations of pharisaic Judaism and the extraordinary micrology of the rabbinical enactments."

The Christians adopted the Jewish seven-day week because of their intimate connection with Jewish religious antecedents and because the planetary week, which Dr. Webster shows was a Hellenistic and not a Babylonian product, with its names of the pagan deities, was at first repellent to them. The early Christians did not, however, choose the seventh day for their religious observances, but met for the

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"word" and the "common meal" on the first day of the week—the day assigned to the resurrection of Christ. By the beginning of the fourth century, however, the Christians had adopted the Hellenistic planetary week, and the meeting on the first day of the week accordingly became a meeting on the "day of the Sun." The Edict of Constantine in 321 A. D. ordering a suspension of labor on "the venerable day of the Sun," while it had no relation to Christianity in itself, fitted in perfectly with, and gave added sanction to, the Christian choice of "the day of the Sun" as the day of worship. There is no evidence that the Christians had tabooed labor on Sunday before this time, but when imperial support was given to Christianity a short time afterwards, the pagan legislation of Constantine was made a Christian regulation supported by imperial law. The erroneous identification of the Christian Sunday with the Hebrew Sabbath grew up later, particularly after the revival of the importance of the Bible, and especially of the Old Testament, at the Reformation. This led to the fanatical "sabbatarian" excesses of the English and Scotch Puritans and their descendants who settled in America.

Thus the Christian Sunday with its taboo upon secular activities, particularly among Protestant sects, is a highly syncretic product. Like the majority of our sacred institutions, it has its roots in the fundamental raw material of religion in primitive thought. It has been built up by many accretions from primitive and antique influences. Primitive ideas of the sacred, Judaism, Babylonian and Hellenistic science, Mithraism, Roman law, and Christian practice and dogma have all combined to produce the institution of the Christian Sunday.

The one topic upon which this review has concentrated is but the most pertinent among many extremely important and interesting problems upon which light is shed by this volume. The book is sure to attract an unusually wide variety of readers. It has in it much of interest for the ethnologist; for students of primitive moral, religious and legal origins; for historians interested in the development of the methods of measuring time; and above all for those interested in the intellectual evolution of humanity. The book might render practical service by falling into the hands of those enthusiasts who are still zealously engaged in the attempt to sustain and perpetuate the pagan taboo upon secular activities on "the venerable day of the Sun."

HARRY E. BARNES.

COLUMBIA UNIVERSITY.

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Principles of Railroad Transportation. By EMORY R. JOHNSON and T. W. VAN METRE. New York, D. Appleton and Company, 1916.—xix, 619 pp.

This volume is a revised and enlarged edition of Dr. Johnson's well-known text. Instead of 427 pages as in the 1908 edition, there are now 577 pages of text, and, in addition, thirty pages of questions and topics for discussion.

The chapters of the book are grouped into three divisions. Part i outlines the growth of the American railroad system, its present position, and its financial condition. To the economist, the chapter on "Railroad Capital" is the most interesting, and it forms, as heretofore, a very useful elementary introduction to the study of railway finance. However, there are some weak spots. If it be granted that not over $120,000,000 was expended in 1900 in building new mileage, is it altogether proper to assume that the remaining $337,000,000 of capital increase represented merely a higher capitalization of roads previously constructed? Is it not likely that some portion of the amount was spent on betterment? Perhaps the authors mean this to be understood; but, if so, the inference is very obscure. Again, is the fact that in 1914 only 64.39 per cent of railroad stock received a dividend an "evidence" of the large watering of the same? May not the financial control of one company by another sometimes affect the matter of dividends, and, in an industry in which corporate existence is exceptionally tenacious of life, should there not be expected a pretty high percentage of concerns below the dividend line yet surviving?

The diagram illustrating the movement of railway capitalization and dividends has been much improved by the modification of the curve so as to remove the $600,000,000 of current liabilities from the total capitalization prior to 1896. But the graphs would be still more accurate if they were broken between 1907 and 1908, and also between 1912 and 1913, in the former place because of the subsequent exclusion of the capitalization of switching and terminal companies and the inclusion in funded debt of certain notes not previously regarded as such, in the latter place because the capitalization of Class III roads is not included in the returns for 1913 and 1914.

The discussion of stock watering manifests a strengthened judicial poise in the inclusion of a new paragraph acknowledging the stimulative effect of the speculative capitalizing of the pioneer railroads and recognizing the later policy of "water" absorption.

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Railway valuation is discussed rather loosely; the student is still left with a very hazy conception of the cost-of-reproduction theory, and is still required to approve the Michigan method of valuation without any establishment of its fundamental suppositions. The inferential condemnation of the no-par-value recommendation of the Hadley Commission is open to similar criticism.

Part ii describes in an attractive way the freight, passenger, mail and express services, with additional chapters on railway organization and railway accounts and statistics. The Official Classification is credited with only fourteen classes instead of fifteen, rule 28 having been overlooked by the authors; the extensive modifications of this classification made by the Central Freight Association might well have been mentioned. No reference is made to the importance of the general rules that form a part of each of the classifications. The British Railway Clearing House was established, not in 1847, but in 1842. The description of the passenger service remains much the same as in the edition of 1908, and is excellent reading. The value of the chapter on accounts and statistics would have been increased if the classification of accounts shown under the income account and balance sheet had been supplemented, in the case of the less obvious items, by explanatory footnotes, and also if the significance of the main railway statistical units had been pointed out to the student, with advice as to their proper interpretation.

The first portion of part iii, dealing with railway combination in the United States, still remains one of the most satisfactorily worked-out sections of the volume. The following chapter on the theory of rates and fares might very properly have been treated more intensively even in an elementary treatise. The discussion of joint costs needs amplification if its proper significance is really to be grasped by the student. In harmony with the popular explanation, we are told that movement expenses per ton per mile grow less with every increase in the length of the haul—an assertion that can hardly be accepted without qualification. Even the superficially axiomatic statement that terminal expenses decrease per ton per mile from short haul to long haul, while not altogether inaccurate, is misleading by reason of the failure to convey any idea of the measure of its importance in connection with the ton-mile costs of that extremely important portion of railway freight—carload shipments, especially of "dead" freight. In line with most writers on the subject, the authors assume that a readjustment of freight charges on the basis of costs (if such were practicable) would greatly disturb existing rate rela-

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tions of high-value and low-value commodities. The reviewer is inclined to think that the emphasis so generally laid upon this is, to some degree, exaggerated under modern conditions of railway trunk-line transportation with its differentiation of "manifest" and "time freights" from "dead freights." The differentiation is, of course, not a perfect one but it is of extensive application, and, so far as it is effective, the cost of carriage of high-value goods is much greater than that of low-value goods.

The final division of the volume treats of the railroads and the state. The account of state regulation in the United Kingdom is very good. The treatment of Germany is not quite so satisfactory, especially as regards the basic legislation of 1838 and 1842. A comparison of the railway mileage and trackage of Prussia and the eastern district of the United States is vitiated by a careless use of the official statistics. Interstate Commerce Commission figures, containing the duplication of mileage operated under trackage rights and presented in the form of mere track mileage, are set in contrast with Prussian figures showing miles of double-track railway. Though the proportion of double-track railway is considerably greater in the eastern district of this country than in Prussia, it is improper to conclude that Prussian trackage facilities are inferior until a careful examination of operating conditions has been made. Prussian railway freight policy has its faults, but conviction of them is not to be brought about by criticism of this sort, which serves only to weaken confidence in the patriotic assertion of our authors that the freight carriers in the United States have built up a better system of transportation than can be found in any other country. We shall all agree that American railway managements have done very well.

The Italian railway situation is analyzed with a judgment that makes one wish it had been given greater space. French railway policy is outlined understandingly, but reference should have been made to the Act of 1845 by which the state relieved local authorities of the cost of the right of way for the nine authorized lines, also to the provision in the Conventions of 1859 calling for an ultimate division of earnings between the companies and the state. The statement that railway charges in France as compared with those of other countries have been relatively high is lacking in precision and accuracy. But on the whole, this review of the railway experience of the four great nations of western Europe affords a good introduction to a subject about which there is too little information in this country, and the student is given sensible advice to the effect that the relation

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of the railways to the state is a problem which each country must solve for itself, there being "no one policy of governmental control of railways that it would be advantageous for all countries to adopt."

To the important matter of federal regulation, two chapters are given, supplemented by a third one on the part played by the courts. An intelligent summary of developments is given. There is a certain vagueness in the statement that the federal act of 1887 went one step further in rate regulation than the British law of 1854, which "merely prohibited unjust discrimination." The quoted clause gives an inadequate idea of the scope of the act of 1854. The authors are orthodox, but hardly illuminating, in declaring that the ruling of the Supreme Court in the Troy case deprived the fourth section of the Interstate Commerce Act of most of its validity. And in explaining the 1910 amendment of this clause (page 522), they do not altogether succeed in making clear the real meaning of the change. The significance of congressional action in the case of the acts of 1906 and 1910 would be more readily appreciated by the reader if some explanation had been furnished of the specific causes leading to the passage of these important pieces of legislation. The attitude of the Supreme Court in the matter of judicial review is appropriately defined by an extract from the opinion rendered in the Illinois Central Coal Car Distribution case, though it is not supplemented, as it might well have been, by a reference to the precise position taken by the court in the immediately succeeding Portland Gateway decision, also dealing with the question of jurisdiction. In outlining the Mann-Elkins amendment of 1910, the new power granted to the commission of fixing maximum rates after hearings held upon its own motion, is relegated by the authors to the list of provisions of minor importance; it seems to the reviewer that this underestimates the possibilities of the clause. The extension of the authority of the commission to enable it to fix minimum rates is recommended on the ground of its usefulness in checking rate wars, but there should have been hesiation in asking the student to accept this justification of such rate control before having him analyze all the elements involved. Opinion is far from united as to the ultimate effect of this proposal.

In the final chapter, the problem of government ownership and regulation in the United States is briefly considered. The general welfare of society, we are told, has been given but little thought in the determination of railway rates and fares. Yet, rightly no doubt, the authors conclude that the socialization of rates and fares obtainable under governmental ownership would not compensate for the disad-

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vantage entailed by the latter. And they might have added that some economists are inclined to believe that the welfare of society is likely to be better conserved in the long run without the hot-bed forcing of governmental management of industry than with it.

A feature of the volume is the bibliography, sectioned out among the different chapters; on the whole the references cover the ground satisfactorily, though there are some notable omissions in the lists attached to the chapters on rate theory and foreign railway administration. Students and teachers of the subject are indebted not only to the authors for the improvement of the text and the bringing of it up to date but also to the publishers for the more attractive setting provided by them.

ERNEST RITSON DEWSNUP.

UNIVERSITY OF ILLINOIS.

Arbitration and Conciliation in Australasia: The Legal Wage in Victoria and New Zealand. By MARY THERESA RANKIN. With an Introduction by J. SHIELD NICHOLSON. London, George Allen and Unwin, Limited, 1916.—192 pp.

Although Miss Rankin gives *Arbitration and Conciliation in Australasia* as the title of her book, she deals with the legislation of only two states, Victoria and New Zealand, one of which, Victoria, had no arbitration laws whatever during the period covered by her treatment. Her excuse for considering the Victorian wages boards as arbitration tribunals seems to be the fact that the chairmen of these boards have, in case of a tie vote of the other board members, the right to cast the deciding vote. Miss Rankin implies, and even states, that it is nearly always necessary for the chairmen to exercise this prerogative, a statement which a first-hand acquaintance with the methods of these boards would not justify. It may be true that in most boards the chairman will, at times, have to give the deciding vote on some matters in dispute, but in many matters, even important ones, the boards reach an agreement without him. At any rate, it is a grave error to deal with the Victorian wages boards as though they were arbitration tribunals. For the boards of New South Wales, the statement would have been true enough.

After giving a very brief account of the reasons which led to the establishment of the wages boards and a brief description of the work of the boards, Miss Rankin discusses the effects of the legislation under the three headings of "Influence of Wages Boards on Sweating," "Influence of Wages Boards on Wages," and "Juvenile Labor and the Standard of Efficiency under a Minimum Wage." For New Zealand there is a brief description of the arbitration court sys-

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tem and there are two chapters which deal with the influence of the arbitration court on wages and industry, and with industrial relationships. Although the book was published in 1916, there are no references to any documents or reports later than 1912 and most of the references are to reports for years prior to 1911.

In his introduction to the book, Professor Nicholson states that Miss Rankin's essay was undertaken at his suggestion and was written under his supervision, being published at the expense of the Carnegie Trust for the Scottish Universities. He says that "the sources used were official reports and publications," and that "the inquiry was conducted with an absolutely open mind and with no preconceived idea of finding support for any economic system or ideal."

Now, on subjects as debatable as the results of legal regulation of wages or of legal prohibition of strikes, it is not surprising if different investigators reach different conclusions, even when they make use of the same evidence. It is, therefore, not to Miss Rankin's discredit if she finds from a study of the official reports that the disadvantages resulting from the Australasian legislation have not been sufficiently emphasized by the officials who drew up the reports or by other writers who have made use of this material. It is a distinct contribution to the discussion to have such weaknesses pointed out. It is not, however, a fair use of such material to conceal from the reader who may not have access to the official reports all the evidence which tends to support the legislation. This is what Miss Rankin has done. The officials charged with the enforcement of the labor laws during the period covered by Miss Rankin's study, who prepared the reports from which she has gathered nearly all of her data (Mr. Harrison Ord in Victoria and Mr. Edward Tregear in New Zealand), were enthusiastic supporters of the laws which they were called upon to enforce. Their reasons for believing that the laws were, in the main, successfully accomplishing the results they were intended to accomplish are fully set forth in their reports, but this evidence is withheld from the reader by Miss Rankin. On the other hand, the officials, in their efforts to improve the legislation, have frankly called to the attention of parliament and the public, methods of evading the laws which have been practised, and administrative weaknesses which have developed in the efforts to enforce the laws. These evasions and administrative weaknesses Miss Rankin has exaggerated and has presented as though they were permanent defects in the legislation. A good example of this mode of treatment is found on pages 51 and 52 of her book where she intro-

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duces a lengthy quotation from the report of the chief factory inspector of Victoria to show how during the early years of the wages boards, because of the lack of any system for granting permits to old and infirm workers to work at less than the minimum wage, these old men were likely to make false statements to the inspectors concerning the wages they were receiving, in order that they might not be dismissed from employment because of their inability to earn the minimum wage fixed by the board. The quotation is one which is familiar to any one acquainted with the Victorian reports and there is no reason to suspect that Mr. Ord was forced to include it in his report or that he did so with any degree of reluctance. Yet, according to Miss Rankin, it is "a confession wrung from one who was most anxious and most responsible for the success of the wages boards." Surely this is not a statement which bears witness to an "open mind" and a lack of "preconceived idea."

It is not easy to state the points in which Miss Rankin finds the Australasian legislation defective, for she is not consistent in her criticisms. She frequently bewails the lack of any clear statement as to the particular principle whereby boards and courts may fix the minimum wage, but elsewhere (page 31) she finds "that one principle in Australasia is, to keep wages at the highest possible level." She finds that the determinations of the Victorian wages boards are really awards by the chairmen, and these chairmen "are usually private individuals entirely unconnected with the trade" (page 39), but a little farther on (page 41) she discovers that one of the advantages of the wages board is that "it keeps the control of a trade mainly in the hands of its own members" (page 41). Miss Rankin's difficulties would disappear if she would surrender her idea that the Victorian wages boards are arbitration tribunals. Their function is rather that of collective bargaining, which differs from the ordinary sort only in the fact that the conference may not break up without reaching an agreement. When this is understood, it can easily be seen that it would be not a help but rather a hindrance to the board, to have to carry on its negotiations in accordance with any definite principle for establishing the minimum wage.

How far the regulation of wages can serve as a remedy for sweating is also a matter concerning which Miss Rankin seems to be confused. In her concluding chapter she argues that the sweated trades are the ones in which there is need of government interference.

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Wages are obviously so inadequate that whether the workers demand it or not, it is to the interest of the state to take the question of their wages under its consideration, and place them on a more adequate basis; even if, theoretically, this may lead to the discouragement of the trade or its extinction altogether [pages 180–181].

In the chapter devoted to the influence of the wages boards on sweating, however, she had argued that during the period of depression, when the wage boards were seeking to better conditions, their determinations were evaded, or else speeding-up was practised (page 54). Any improvement in conditions in these trades came only with improved trade conditions.

Miss Rankin's contention that the work of the Victorian wages boards has resulted in a gradual leveling-up of wages, as the minimum wage has come in practice to be the standard wage, and the differentiation between this minimum wage and the wages paid to the more competent workers has become less noticeable, is probably true, although the wage statistics which she furnishes throw little light on the subject. There is no evidence whatever to sustain the claim made by Professor Nicholson that this rise in the minimum wage has been accompanied by a decline in the efficiency of the workers (page 10).

The chapter on "Juvenile Labor" merely raises some possible answers to the question as to why the apprenticeship system has not resulted in a sufficient supply of highly skilled laborers. All these answers tend to throw the blame on the minimum-wage system, but there is no evidence given to show that there is any connection between the lack of skilled labor and this mode of regulating wages. The question as to the training of workers is a serious one throughout Australia. With the introduction of machinery and large-scale production, the old system of apprenticeship has in large measure broken down and no satisfactory substitute has been discovered. Much attention is being given to the subject and several states have had commissions investigating the situation and endeavoring to find a remedy. The reports of these commissions do not furnish any evidence to support the claim made by Miss Rankin that restriction in the number of apprentices by wages boards has intensified the evil of a lack of competent labor in the skilled trades.

Miss Rankin's treatment of New Zealand is too brief to furnish much information concerning the industrial situation there. She seems mainly interested in showing that strikes have not ceased, and that the recent strikes there indicate that labor is no longer friendly to the arbitration act, but as to who the disaffected laborers are, or

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how general is the dissatisfaction, she has nothing to offer. The *New Zealand Official Year Book* and the publications of the Department of Labor are easily accessible and they show a rapid increase within recent years in the number of unions who have registered to take advantage of the Industrial Conciliation and Arbitration Act, but Miss Rankin makes no use of official reports later than 1912.

In the hands of students who are familiar with Australasian labor legislation at first hand, or who compare the conclusions set forth in Miss Rankin's book with those of other investigators, her work will repay study, as it will show that too much confidence must not be placed in the success of the Australasian experiments. But the book is not a scientific treatise. In spite of Professor Nicholson's assertion, it is not the work of one who studied her materials with an open mind and with a desire to set before the reader a full and complete statement of the results of the Australasian legislation, as it is revealed in the official reports.

M. B. HAMMOND.

OHIO STATE UNIVERSITY.

Mine Taxation in the United States. By LEWIS EMANUEL YOUNG. Urbana, University of Illinois, 1916.—275 pp.

The increasing importance of the mining industry as a source of public revenue has created an urgent demand for a satisfactory treatise upon mine taxation. The many difficult problems involved in the equitable taxation of this industry have given rise to many investigations in this field of inquiry, and numerous brief articles on one or more phases of the problem have been written. Until the appearance of Professor Young's book, however, no publication in America had made an effort to deal with the problem in a thorough-going manner.

The reason for the paucity of literature does not long remain hidden after one has penetrated even a little distance into the problem. The fact is that in the taxation of mines one is confronted with a combination of problems, partly theoretical, partly accounting and partly administrative, that has baffled most investigators. It should not be surprising, therefore, if the first extended discussion of the subject should fail to treat all parts of the problem with satisfying thoroughness.

The work covers a large field of investigation, some parts of which are quite fully dealt with, while others are dismissed with slight consideration. The book is largely historical or descriptive, and is noticeably lacking in economic analysis. A wide range of American experience has been drawn upon, but almost nothing has been culled from

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the foreign fields. Here and there is a scattered reference, for example, to Canada and Mexico, but with few exceptions there is no attempt to bring to bear upon the American problem the experience of other countries.

The book for the most part has been prepared with much care. It contains numerous references to sources, it is clearly and concisely written, and it has appended the most complete bibliography that has yet appeared. There are a few evidences of careless proof-reading, such as the omission of part of the third paragraph on page 46, the first part of the first paragraph on page 47, and part of note 76 on page 55. The variety of topics, and the varying degree of thoroughness with which they are treated, render a fair and accurate criticism of the work as a whole impossible without an examination chapter by chapter.

The treatment of the federal taxation of mines in chapter ii is very brief and not altogether satisfactory. In this connection an adequate discussion of the question of deductions for amortization in the case of wasting assets would have been timely. The brief enumeration of some of the more important facts in the history of mine taxation in the eighteen principal mining states, contained in chapter iii, is perhaps all that could be included. There is scant record, however, of the fiscal or administrative success of the various systems of taxes that have been tried from time to time by the several states.

Chapter iv contains a useful collection of the constitutional and statutory enactments of the various states bearing directly or indirectly upon mine taxation, and chapter v gives an excellent brief description of the essential points in the methods of state taxation. For the most part, however, the study lacks analysis and shows little effort to indicate the comparative success of the different systems tried in the several states. In chapter vi is given a good descriptive, though not critical, statement of the methods and differences in method.

In chapter vii, under the general heading, Administrative Problems, is grouped a variety of topics, including the appraisal of mining properties, allowances for depreciation of ore reserves, classification of mines, mine accounting, and the shifting and incidence of mine taxes. A considerable mass of informing data is presented in regard to the first three of these topics; the last two, however, are given such scant treatment that one wonders why they were included at all.

In attempting to measure the tax burden upon the mining industry in the United States, Professor Young attempted a difficult task. The statistics in regard to this problem are meager, incomplete and unsatisfactory. To make anything like a complete study was evidently

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impossible. In assembling the statistics from scattered sources and in making the compilations, the wide variations in the actual burdens imposed in the various states are brought to light. The figures also illustrate the haphazard methods of taxing mines in the United States.

Chapter ix contains an enumeration of the miscellaneous reform measures that have been suggested by mining engineers, tax administrators and economists. The economists have done little in this field.

After reviewing the many phases of the subject indicated by the foregoing outline, Professor Young devotes only five pages to his conclusions. It is to be regretted that after such painstaking investigation, he could not have gone further in the direction of constructive proposals. In this connection, however, the author says:

> It is essentially an historical statement and an explanation and comparison of methods employed in assessing and taxing mining properties. While the material may not be of service to either the economist who is an authority on taxation or to the mining engineer experienced in mine valuation, it is hoped that it may serve to bring to a number of economists something of value from the field of mining, and to some of the mining profession, something helpful from the field of taxation.

In this regard the author has accomplished his purpose.

Notwithstanding the absence of economic analysis on one side and new constructive proposals on the other, the book will be of great value to the student of mine taxation, the legislator and the tax official. It is the best treatment that has appeared, and now that Professor Young has assembled the fundamental information, the way is made much easier for a more analytical and constructive piece of work.

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Patriots in the Making. By JONATHAN FRENCH SCOTT. With an introduction by MYRON T. HERRICK. New York, D. Appleton and Company, 1916.—xvi, 263 pp.

Rousseau must be adjudged no mean contributor to the modern ideal of nationalism. It was not a mere coincidence that the French *philosophe* wrote both *Le contrat social* and *Émile*. Professor J. Holland Rose in his *Nationality in Modern History* has brought out clearly that *Le contrat social* constitutes a definite starting point for the nineteenth-century notion not only of popular sovereignty, but also of the national state. And that *Émile* has exercised a profound influence upon educational theory and practice in the nineteenth cen-

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tury, none will deny. Popular state education, since the time of Rousseau, has been the handmaid of democracy and nationalism. The more the common people have counted in any country, the more necessary it has seemed to educate them under state auspices in the literature and history of the nation and in the methods and aims of its government. And the more thoroughly the common people have been so educated, the more loyally have they rallied to the support of their government, the more eagerly and unquestioningly have they responded to the appeal of nationalism—of "their country right or wrong"—and in the main, it must be confessed, the more intolerant have they become of the national ideals of their neighbors.

It is with the relationship of popular elementary education to the principle of nationalism in France and in Germany that Dr. Scott's book is chiefly concerned. The section on France, comprising a little more than half the volume, is most illuminating. It indicates how the theory of democratic state education was fashioned in the days of the Great Revolution, how it played a narrowly nationalistic and patriotic rôle under Napoleon, how it was modified and impaired by the *Loi Falloux* of 1850, only to be reasserted and applied in a most comprehensive and intensive way, as a veritable engine of propaganda to all Frenchmen, under the auspices of the Third Republic. Here by liberal reference to a host of text-books in use in the public schools Dr. Scott shows us how Frenchmen of the present generation have been taught to be republican in politics, skeptical in religion, and above all patriotic to France. It is in large part due to this education that Frenchmen have continued to entertain hostility toward Germany and to bear with little murmuring the burdens of a gigantic militarism. To be sure, the governmental program for secondary instruction appearing in 1902 greatly restricted the attention to be given to battles and wars and diplomatic history, and put more emphasis upon the study of social history and contemporary society; and for a time pacifism and internationalism seemed to threaten militarism and narrow patriotism. It was a needless alarm, however. In the midst of the tension in Franco-German relations which resulted from the Tangier incident of 1905, the schools once more displayed their docility to a government that was bent on "saving" the Republic, on maintaining the efficiency of the army, and on utilizing any favorable opportunity to extend imperialism and haply to regain the "lost provinces." That Frenchmen rallied enthusiastically to support their government in the present war is striking proof that they had been made real patriots in the schools of the Third Republic.

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Dr. Scott's treatment of German education is not nearly so satisfactory as his treatment of French education. It is confined to a single chapter and is enriched by comparatively few quotations from school text-books. While it is sufficient to convince the reader that the German — especially the Prussian — government has utilized the popular school system to fortify monarchical power, to exaggerate race consciousness, and to foster imperialism and Pan-Germanism, nevertheless it involves on the whole an indictment less severe and less sweeping than the more extended treatment of French democratic education. It may well be that, had Dr. Scott been as thorough in studying German education as he has been in investigating French, the most dogmatic of the opponents of *Deutschtum* would have ample witness to the truth of the faith that is within them.

What a pity that an inspiring book should be marred, like many a poem of Longfellow's, by the "fallacy of the didactic." We wish more facts or more pictures—and we are given a moral. If artists and scholars will moralize, let them do so simply, but not in the manner of this book. Dr. Scott himself devotes an entire chapter to "The Lesson for America," the reading of which arouses now our admiration, now our suspicion and fear, at length an uncomfortable feeling of vagueness, and finally an overpowering doubt as to what the moral really is. Mr. Herrick tries his hand at the didactic in the introductory note; the "lesson" as described by him is certainly clear, but it appears to be drawn less from Dr. Scott's book than from Mr. Herrick's own inner consciousness; with it the reviewer at least has no sympathy. Quite likely the blame for the book's didactic sections rests not with Dr. Scott but with the publishers. It certainly must have been publishers intent on catering to a public of their own imagining who obliged the author to serve up, as dessert, a wholly irrelevant concluding chapter on "Military Training in Europe."

Dr. Scott has made a most valuable study of the influence of democratic education on the propagation of French nationalism. It is to be hoped that he will continue to apply his brilliant qualities of unbiased scholarship and neat expression to like studies affecting other nationalities, with a view to providing us with sound information on a most important subject.

CARLTON J. H. HAYES.

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BOOK NOTES

After a lapse of six years there appears a new (seventh) edition of Alfred Marshall's *Principles of Economics* (London, Macmillan and Company, Limited, 1916; xxxii, 871 pp.). In the preface we are told that the edition is almost a reprint of the sixth, the only changes being in small matters of detail; and both resemble the fifth edition so closely that the pagination is practically the same in all three. Professor Marshall now informs us that he is still engaged in writing an independent work, which is to extend to more than one volume, on industry and trade. It is sincerely to be hoped that the state of his health will permit the beloved Nestor of modern economists to complete his anxiously awaited work.

The attempt to compare the economic conditions of the present with those of the past is attended by much difficulty. Mr. H. R. Hodges' little essay entitled *Economic Conditions: 1815 and 1914* (London, George Allen and Unwin, Limited, 1917; 91 pp.) won the Paul Philip Reitlinger prize in the University of London in 1915. In less than one hundred pages Mr. Hodges succeeds in presenting a fairly clear picture of the conditions of Great Britain as respects population, finance, occupations and wages at the close of the Napoleonic struggle and at the outbreak of the Great War. He shows in satisfactory fashion the great improvements in the economic conditions of the people, and raises at the end the inevitable question why such progress has brought so little satisfaction. The answer is that notwithstanding the gains of the body of the people, the existing distribution of wealth is grievously bad. His hope for the future lies in the non-material progress of the people, which will fit them to help bring about the necessary economic and political changes.

A rather ambitious task has been attempted by Professor Frederick A. Ogg of the University of Wisconsin in his *Economic Development of Modern Europe* (New York, The Macmillan Company, 1917; xvi, 657 pp.). Where the endeavor is made to compress so huge a subject into so short a compass, all that can be expected is a satisfactory arrangement of the subject matter. It is virtually impossible in such a general plan to break any new ground. Professor Ogg deals with the subject in three parts, treating first of agriculture, industry and trade in general, then of population and labor, and finally of socialism and

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social insurance. In this arrangement, as will be easily recognized, there are several great gaps. The work pays no attention to money and banking questions, to problems of public finance, to railroad transportation, or to some of the underlying technical problems connected with production. So far as the book goes, it is a convenient compilation which will no doubt be serviceable in college classes; but it still leaves room for a really first-class work on the subject.

Professor Ivan Oseroff, of the University of Moscow, is responsible for a suggestive study of Russian economic questions, under the title *Problèmes Economiques et Financiers de la Russie Moderne* (Paris, Payot et Cie, 1916; 179 pp.). The three problems with which he deals are the reconstitution of the fiscal system due to the abolition of the vodka monopoly, the need of a comprehensive system of railway transportation, and the Jewish question. The author believes that the future has in store a great development of income and inheritance taxes, and that the most urgent need of Russia is the completion of its railway network. From the Jewish emancipation, which he confidently foretold at the time, he expects the most important industrial and commercial advantages. In a supplementary chapter on the war, he points out that the post-bellum economic relations with Germany must always remain very close, but that the economic independence of Russia lies at the very root of the struggle.

In these days of renewed interest in the problems of international trade, a timely book is that of Dr. Fritz Mender entitled *Das moderne Zollschutzsystem* (Zurich, Institute Orell Füssli, 1916; ix, 232 pp.). The book is evidently a doctor's dissertation. The author deals primarily with the opponents and advocates of protection in Germany from the middle of the 70's to the end of the nineteenth century. To those who are not well acquainted with the great controversy that has taken place in Germany during the past half-century and which has resulted in the virtual adoption of the neo-mercantilism which now bids fair to spread to other countries as well, Dr. Mender's book will be interesting. His own conclusions tend rather in the direction of free trade.

The third edition of Professor Ely's *Outlines of Economics* (New York, The Macmillan Company, 1916; xiii, 769 pp.) still bears on the title-page the names of Professors Adams, Lorenz and Young, as in the second edition. The new edition of this co-operative work has been subjected to a careful revision and large parts of two of the books have been virtually rewritten. In its new form the work will no doubt retain the secure place that it has gained for itself for purposes of college instruction.

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It is several decades since Professor Cauwes published the textbook on economics which almost more than any other has been used ever since by law students in France. Thinking that the time had come for a modern presentation of the topic, Professor Camille Perreau, of the Paris Law School, has written a two-volume work entitled *Cours d'Economie Politique*, (Paris, Pichon et Durand-Auzias, 1914; two volumes: viii, 552; 600 pp.). His point of view, as he tells us, is frankly realistic. He attempts to reduce the purely doctrinal discussions to their narrowest limits and endeavors to deal as fully as possible with all the practical problems that have come to the front in France of recent years. The book will probably make only a slight appeal to others than Frenchmen, but will no doubt fill a useful place in the list of modern French texts which are virtually required in the law school course.

It is eleven years since the last edition of Mr. John A. Hobson's *The Evolution of Modern Capitalism* was published. It now appears in a revised edition (New York, Charles Scribner's Sons, 1917; xvi, 488 pp.) containing a valuable supplementary chapter on "Industry in the Twentieth Century." This chapter gives the leading facts of British industrial development as disclosed by the census of 1911, and ends with a suggestive discussion of the probable industrial consequences of the war. "If the European governments," says Mr. Hobson, "are unable to build up international arrangements which furnish any prospects of durable peace, the armed nationalism into which our people as others must retire, will compel the subsidization and probably the nationalization of a number of these 'key industries'" (mining, shipping, chemicals and others). Mr. Hobson also believes that the experience of the war is likely to convince us that government should exercise a much more direct influence in matters of money and credit. "To leave entirely to private business enterprise the production and the supply of money, with occasional inroads of state interference at moments of peril, is a course as indefensible in reason as it is injurious in practice." Furthermore, heavy international armament with its intolerable economic burdens will not afford national security. It will only mitigate the immediate insecurity and postpone while it ensures a future war. International economic rivalries will almost certainly bring future wars unless they are controlled by international politics. "This forward movement in political and economic internationalism is the only escape from a reversion towards a reactionary nationalism which will at once diminish the 'opulence' of each country without insuring its 'defense'."

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Mr. Hobson's economic heterodoxy lends a flavor of piquancy to his notable *Work and Wealth* (London, The Macmillan Company, 1914; xvi, 367 pp.). Accepting fundamentally Ruskin's discussion of consumption as the basis of economic study, Mr. Hobson insists that this touches but half of the problem involved. Not only must we make the right goods in the right amounts, but we must make them under conditions that reduce to a minimum the human costs involved. Mr. Hobson analyzes in suggestive fashion the conditions that increase the human cost of work, and his book is largely taken up with the attempt to show by what measures of readjustment the utility of consumption can be increased and the costs of production can be diminished. It is natural that this attempt should not be wholly successful, for the task involves the entire question of reconstructing present-day economic life. None the less, the work is one of the most brilliant and suggestive of recent publications in the field of social economics. It represents a wholesome tendency to reduce economic science to terms of human valuation, and the orthodox economist cannot turn its pages without finding his calm stirred by new and troublesome thoughts.

Mr. Dennis Holme Robertson, Fellow of Trinity College, Cambridge, is responsible for an unusually thoughtful monograph entitled *A Study of Industrial Fluctuation* (London, P. S. King and Son, Limited, 1915; xiii, 285 pp.). Following the example of Mitchell, to whom he gives, however, a somewhat grudging acknowledgment, the author presents a continuous narrative of the successive phases of a typical industrial cycle. The causes of the upward movement he finds to be a general increase in the physical productivity of effort and in the value of industrial as over against agricultural products, an increase in the expected future productivity of constructional goods, and an expansion in the volume of currency. This upward movement is followed in the course of time by a downward movement, each of the elements of which is successively analyzed. The final discussion deals with the remedies, which are outlined as follows: 1. The tendency to interlocal and intertemporal compensation in agriculture. 2. The reduction of discontinuity in the process of investigation. 3. The diminution of the tendency to miscalculation on either the up or the down grade. 4. The mitigation of the incidental effects of over-investment during the boom time. The two outstanding remedies, in the mind of the author, seem to be monopoly control of constructional industry and the artificial elevation of the demand for constructional goods. Although many of the points are only inadequately treated, the book as a whole will well repay careful study.

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It is evident that *Transportation Rates and Their Regulation* (New York, The Macmillan Company, 1916; xii, 347 pp.), by Harry Gunnison Brown of the University of Missouri, is written as a text book rather than as a contribution to the science of transportation. Dr. Brown is a pronounced free-trader who wishes to see even the domestic business of the country undisturbed in the natural lines of its development by the uneconomic rulings of arbitrary rate makers or by equally uneconomic government donations, subsidies or shipping restrictions. He considers that even the public donations of the past to our railroads were unfortunate, holding the rapid development of the West to have been detrimental to the East. It is a little difficult to tell on just what grounds the author would determine whether or not transportation rates produce distortion of business or uneconomic discrimination. He places little faith upon the principle of value of service and declares that the greater part of the costs of transportation cannot be allocated to the several branches of the service. He apparently prefers not to follow any general principle in determining the reasonableness of rates, but to examine all the circumstances in each case. Dr. Brown still clings to the old belief that competition is desirable. He leaves the reader far too strongly impressed with the degree to which the law has broken monopoly power in transportation. One would think, from his description, that no such organizations as our elaborate traffic associations existed after the Joint Traffic Association Cases. Dr. Brown's book is simpler and better organized than some of its rivals in the text-book field. It gives a good digest of state and federal regulation laws, but lacks a comprehensive description of the existing rate systems, and neglects the modern problems of valuation, conflict between state and federal commissions, increasing costliness of transportation, and the provision for rapidly expanding demands of our commerce, particularly in our large terminals.

A timely publication is that of Mr. Mark Wymond on *Railroad Valuation and Rates* (Chicago, Wymond and Clark, 1916; 339 pp.). The author tells us, in his foreword, that he has had some thirty years experience as a railway engineer, with incidental attention to the economic and financial aspects of the railway problem. This explains at once the strong and the weak points in the volume. There are a number of acute and practical comments on the various difficulties connected with valuation; but there is, at the same time, a neglect of the various considerations which have loomed large in recent years in the discussion of the same topics by professional economists. So far as might be inferred from any references in the book, there is no such

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thing as the science of economics nor is there any indication as to the difference between the private and the public point of view. Especially on the subject of rates, do we find a great deal of old straw threshed over again. As a practical manual of valuation, written from the point of view of the engineer, the student will find not a little to interest him; but it is none the less a matter of regret that there should not be a closer co-operation in investigation and in conclusion between the engineering expert and the economist.

The frequent illustrations that adorn the pages of Professor Emory R. Johnson's *The Panama Canal and Commerce* (New York, D. Appleton and Company, 1916; 296 pp.) serve notice on the reader of the semi-popular character of the work, which takes up the effects of the canal on freight rates, the internal industries, the domestic and foreign trade and merchant marine of the United States. It also deals with the competition of the Suez and Panama routes, comparative costs via the canal and the alternative routes, the question of tolls, and the commercial administration of the canal. Of course there is no one who can speak with more authority on all these questions than can Professor Johnson, and those who wish to obtain a quick and comprehensive view of what the canal has already accomplished commercially and to get some idea of the possible developments of the near and more distant future, cannot do better than to turn to this little book. The closing of the canal by the Culebra slides gives Professor Johnson the opportunity for an interesting final chapter illustrating concretely the canal's usefulness to the commerce of the United States and the rest of the world. Some day an extensive study will be made of the commercial and industrial results flowing from the opening of this great inter-oceanic waterway; until such a study is completed in the light of more experience than is yet available, Professor Johnson's book will serve as one of the convenient sources for those who wish to know the commercial service rendered by the canal.

Professor J. Russell Smith, of the Wharton School of Finance, has made available in *Commerce and Industry* (New York, Henry Holt and Company, 1916; viii, 596 pp.) what is virtually an abridged edition of his large work on *Industrial and Commercial Geography*. About one half of the book deals with the United States, and a not inconsiderable portion is devoted to maps, tables and photographs, which on the whole are well chosen and illuminating. The book will undoubtedly take its place among the more popular manuals of commercial geography.

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The third edition of *A Brief History of Panics and Their Periodical Occurrence in the United States* (New York, G. P. Putnam's Sons, 1916; 189 pp.) needs but brief notation. The second edition represented a translation by De Courcy W. Thom of such parts of Professor Clement Juglar's *Des Crises Commerciales et Leur Retour Periodique en France, en Angleterre et Aux États-Unis*, as bore on the United States. The third edition brings the subject-matter down to date, adding new material for the periods 1890–1917. The whole treatment is, however, very sketchy, and while the book is interesting enough, it makes no real contribution to our knowledge of panics.

One of the most thorough-going and useful studies of the English money market is to be found in Ellis T. Powell's *The Evolution of the Money Market (1385-1915)* (London, The Financial News, 1915; xv, 732 pp.). Mr. Powell in part I studies the conditions that underlay the early development of the market, sketches the influence of the goldsmith bankers, the rise of the Bank of England and the London Stock Exchange, and treats of the important part played by the rise of the corporate form of business enterprise. In part II he shows how, through the Bank of England, the nucleus of organization for the modern market was found; in part III indicates how the different elements entering into the modern market through various vicissitudes were finally forced into relatively solid organization; and in parts IV and V describes the closer co-ordination of the market and the manner in which it has met the test to which in late years it has been subjected. No student of modern banking and finance can afford to neglect this valuable contribution.

Distilling from European experience sound principles of procedure, Henry W. Wolff, the well-known authority on co-operative credit, has in his *Co-operative Credit for the United States* (New York, Sturgis and Walton, 1917; VI, 349 pp.) pointed the way for the development of a system of co-operative credit in this country. In the last few years the subject has attracted wide-spread attention and a start has been made in the mobilization of land credit. But the possibilities of thoroughgoing co-operative credit are still little understood on this side of the Atlantic. Mr. Wolff has always been an enthusiastic advocate of co-operative credit and has written copiously in support of the movement. The book here noted, however, has been prepared with the special conditions of the United States in mind. Hence, while the student of co-operative credit will find in it little that is new in the realm of principle, the special setting with which the discussion is supplied gives it an atmosphere of freshness.

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The University of Kansas has published, as the second number of volume ii of its Humanistic Studies, a valuable monograph by Professor George E. Putnam on *The Land Credit Problem* (Lawrence, Kansas University, 1916; 107 pp.). The monograph has a number of chapters on the situation of rural credit in the United States, all of them leading up to the Federal Farm Loan Act. The central point of Professor Putnam's thesis is that the new law does not touch the really important problem, which is that of making the conditions of country life more attractive to the younger generation of farmers and of stopping the movement toward land tenancy. The land-credit problem, so far as the landowners are concerned, is, in his opinion, a comparatively simple one and can be solved by legislative action in the separate states. But the far vaster problem is that of land-purchase legislation, which, in his opinion, must soon be taken up by the federal government.

A new source-book that is likely to have wide use is *Readings in the Economic History of the United States* (New York, Longmans, Green and Company, 1916; xxvii, 862 pp.), by E. L. Bogart and C. M. Thompson. This book is designed to provide a sufficient body of material for reading to supplement text-book and lectures in courses on our economic history. The entire period from 1583 down to 1915 is covered, the material in practically all cases being drawn from contemporary sources. A valuable feature that adds to the interest and liveliness of the work is the inclusion of selections from the writings of travelers and other qualified observers of the same sort. In the later period official documents are extensively used. About one-quarter of the book is devoted to the period from 1600 to 1808; one-half to the year from 1808 to 1860, and the remaining fourth to the period since the Civil War. Of course no mere reading of selections can take the place of an extended examination of the sources themselves, and the question may be raised whether too extensive use of source-books of this character may not tend to lead students to content themselves with a mere process of sampling; but on the other hand, the examination of contempory sources, even though it be only in spots, cannot fail to give students a somewhat different point of view from the mere perusal of pre-digested texts, and it may well serve to stimulate some to go back to the sources themselves. The authors have provided a convenient and serviceable compilation which will aid further in the process of making students acquainted with the outstanding facts of our economic history, a process to which the senior author has already materially contributed.

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A considerable number of studies of women's labor in particular industries have recently appeared. Among them we note *The Boot and Shoe Industry in Massachusetts as a Vocation for Women* (Boston, Women's Educational and Industrial Union, 1915; 109 pp.), May Allinson's *Dressmaking as a Trade for Women in Massachusetts* (Boston, Women's Educational and Industrial Union, 1916; 180 pp.), Lorinda Perry's *Millinery as a Trade for Women* (New York, Longmans, Green and Company, 1916; 134 pp.), and Mary Van Kleeck's *A Seasonal Industry* (New York, Russell Sage Foundation, 1917; x, 276 pp.). In these books an excellent description is given of three important industries—dressmaking, millinery and the making of boots and shoes—in which women and girls are employed in large numbers. The general plan of each is the same; an outline of the trade and its processes; its seasonal fluctuations; the character of the labor force; wages and working conditions; and methods of learning the trade. The thorough information that these monographs contain should be of especial value to those who are interested in the vocational guidance of girls in the elementary and secondary schools. But it should have a wider appeal also; for fashion trades such as these are peculiarly dependent upon the will of the consumer, and it is to the consumer that a plea must be made in order to cope with some of their most troublesome problems. The question, for example, of irregular earnings, which arises from the highly seasonal character of the dressmaking and millinery trades, must be dealt with in part through a regularization of the demands of consumers, so as to avoid the rush of last-week orders and to extend the season of normal activity. Those who believe that a remedy for low and irregular earnings lies in constructive labor legislation will find an excellent argument for a legal minimum wage in the chapter on "Public Control in the Millinery Trade" in Miss Van Kleeck's study. Although the statistical material is already somewhat out of date, the intrinsic value of the studies from a social and educational point of view is in no way impaired.

The book by Amy Hewes on *Women as Munition Makers* (New York, Russell Sage Foundation, 1917; v, 93 pp.) is the result of a study of 165 women workers employed in the largest munition plant in Bridgeport in the summer of 1916. It is an account of the social effects of industry in a war-boom town. The sudden expansion of the military arms and ammunition business made Bridgeport in 1915–1916 pre-eminent throughout the country in the manufacture of munitions. Within a few months hundreds of men and women poured into the city to work in the arms and cartridge plants and in the other factories

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of various types. Almost over night the city was faced with new and pressing health, housing and recreational problems. The story is concerned chiefly with the way women workers fared while making shells for the Remington Arms-Union Metallic Cartridge Company. The work itself is "fairly light and easy and calls for natural dexterity and speed rather than for long training." It is work, however, that is attended with a high accident rate, since "it may be said with almost exact accuracy that in the munitions industry in Bridgeport one woman was injured each week throughout the year seriously enough to disable her for ten days or longer." Injuries to health due to industrial poisoning are also frequent. Owing to the pressure of war orders the work was organized so that production was continuous. Long hours and night work were common, and as the report states, manufacturers were turning out goods "under conditions declared wasteful by English investigators." Lowered standards in the general conditions of work were somewhat offset by higher wages, but "even though many of the families interviewed earned much more than the amounts which are usually described as 'living wages' they often suffered from a lack of housing accommodations, and of educational and recreational facilities." The question facing Bridgeport has been, "How can we maintain maximum production at the minimum human and social cost?" Thus far the civic program of betterment has been concerned with public health, housing, recreation and education. But it has made no provision for industrial improvement. The need for such improvement is suggested constantly throughout this brief study, and has become imperative as a question of national urgency and importance with our entry into the war. Appended to the study is a summary by Henriette R. Walter of the reports issued by the British Ministry of Munitions on Munition Workers in England and France.

An intensive study of industrial home work giving detailed reports of over a dozen different industries is contained in *Industrial Home Work in Massachusetts* (Boston, Women's Educational and Industrial Union, 1915; xxxi, 191 pp.), prepared under the joint direction of the Massachusetts Bureau of Statistics and Amy Hewes. The most important conclusions based on a careful examination of the data are that home work is not justified by the economic conditions of the families affected; that the continuation of home work is fraught with grave dangers to public health; that regulation by licensing and inspection is extremely difficult; and that industrial home work, therefore, should be prohibited. These conclusions are based on an extremely careful and thoughtful presentation of facts.

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There are twenty-five contributors to *The Coming Newspaper* (New York, Henry Holt and Company, 1915; vi, 323 pp.), which takes its name from the introductory article written by Professor Merle Thorpe, of the School of Journalism of the University of Kansas. The distinctive feature of the book is its optimism. Changes for the better are recorded in several of the chapters, notably in the contribution of Professor James Melvin Lee, of New York University, who notes with satisfaction the vast improvement in recent years in the advertising columns of the American newspapers. The Associated Press and the United Press are presented in a much better light than that in which they have appeared in many recent magazine articles. One of the most valuable contributions, that of Mr. Oswald Garrison Villard, deals with "Some Weaknesses of Modern Journalism." Mr. Villard lays most emphasis on the lack of accuracy in the reporting of speeches. He notes, however, that our news columns at present are cleaner than they used to be, and that our newspapers exhibit a steadily growing freedom from political partisanship.

There are at least three good histories of English journalism, one of which carries the history nearly to the end of the Victorian period. Mr. R. A. Scott-James' book on *The Influence of the Press* (London, S. W. Partridge and Company, Limited, 1913; ix, 320 pp.) will have a distinctive place in British newspaper literature, partly because of the year in which it is written, which is on the eve of the Great War, and partly because it analyzes with care and discrimination the causes of the great changes which came over the English daily press in the period from the establishment of *The Times* in 1785 to the creation of *The Daily Mail* by the Harmworths in 1896. The chapter on the penny press—the daily press that came into existence after the last of the taxes on newspapers had been repealed in 1861—is a peculiarly valuable contribution to English social history. It is to be regretted that in a book that covers so much ground and covers it so satisfactorily, there is scarcely a mention of English and Scottish weekly newspapers—newspapers established in every provincial town, which furnished so large a part of the newspaper reading of the industrial and farming classes before the days of the half-penny morning and evening papers. A new England and a new British Empire are being developed by the war, and the home and oversea problems growing directly out of the war will make new demands on the newspapers. This fact adds greatly to the value of Mr. Scott-James' study of the growth, history and influence of the press up to the beginning of the conflict.

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In what is apparently a doctoral dissertion entitled *The Function of Socialization in Social Evolution* (Chicago, University of Chicago Press, 1916; vii, 237 pp.), Prof. Ernest W. Burgess defends the important sociological thesis that socialization, or the "participation of the individual in the spirit and purpose, knowledge and methods, decision and action of the group" is the most important factor in social evolution. The work is divided into three parts; the first is devoted to the task of proving that socialization is the dominant factor in the evolution of the technique by which man has been able to utilize or control his material environment; the second traces the influence of socialization in the development of English society from the earliest times to the present capitalistic stage and is an admirable brief survey of English social history; the third considers the function of socialization in the development of the human personality in its three aspects of cognition, feeling and volition. Dr. Burgess concludes that geographic influences, in general, but condition and only in extreme instances determine human activity. The social environment, social heredity, social organization—in a word, socialization—are the dominant forces. Thus instead of economic determinism we have psychic and social determinism. While Prof. Burgess has not exhausted the subject, his work is a serious contribution to what is perhaps the cardinal proposition in sociology.

Professor E. C. Hayes intends his *Introduction to the Study of Sociology* (New York, D. Appleton and Company, 1916; xviii, 718 pp.) to serve primarily as a textbook for a general course in sociology. After a brief introduction, dealing with the nature of society and of sociological explanation, he takes up those causes which affect the life of society as the general subject of the first part. There are four of these: (1) the natural physical environment, or geographic conditions as they affect life; (2) the artificial physical environment, or the effects of the material products of man's labor upon himself; (3) the psycho-physical conditions, or the population with its hereditary and acquired traits; (4) social conditions, or the nature and relationship of the activities prevailing in a social environment. The suggestive chapters on the social causes affecting the life of society deal with association, communication, suggestion, imitation, prestige and accommodation. In the second part an analysis of the life of society is made, and part iii gives in brief compass an instructive view of the chief facts of social evolution, while part iv deals with social control. There is a vigor about this book which makes it readable, and an earnestness which makes it carry conviction.

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In the first three chapters of his *Outline of Applied Sociology* (New York, The Macmillan Company, 1916; x, 353 pp.) Professor H. P. Fairchild sets forth his conception of the field of applied sociology, defines the terms he intends to use and classifies social phenomena for the purposes of his treatment. In the body of the book, much to the detriment of its unity and clearness, he follows the scheme he has thus mapped out. His treatment of the population question scarcely goes beyond the conventional type of such discussions in textbooks on economics. The book contains no discussion of so vital a matter as responsibility for social evils. Having adopted a rigid scheme for the classification of the facts of social life, the author has failed to attain any vital unity in the treatment of the different social problems.

A definite attempt is made by F. W. Blackmar and J. L. Gillin, the authors of *Outlines of Sociology* (New York, The Macmillan Company, 1915; viii, 586 pp.), to meet the needs of teachers for a general text in sociology. The chief aim of such a book should be to describe and explain the phenomena of society so that the student would have a good understanding of its structure and functioning. It is doubtful whether those parts of this work dealing with The Nature and Import of Sociology, The History of Sociology, and Social Ideals and Social Control, will contribute much to this end. Part v, dealing with Social Pathology, is excellent and might well have been extended. The part on Social Evolution has much good material in it but in some places reading becomes tedious. The authors seem more interested in illustrating certain rather abstract conceptions than in giving a simple natural description of development as it actually takes place in customs and institutions. For the purpose of developing in the student a clear conception of the nature of society and a capacity for intelligent criticism of the social order the book can be only partially successful.

Dr. Willystine Goodsell's *History of the Family as a Social and Educational Institution* (New York, The Macmillan Company, 1915; xiv, 588 pp.) is, as its title indicates, a textbook for class-room use, which gives an historical treatment of the family with special regard to its personal aspects, its social relations, and its significance as a formative or educational agency for the individual. The historical chapters, which comprise four-fifths of the book, are based on a comprehensive examination of original sources, and present in turn the various types of family from the primitive family down to the American family of today. The chapter on "The Present Situation" presents the instability of the family at this time, as revealed by divorce and desertion, the effect of industrialism on family relations, the decline of the mar-

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riage rate and the birth rate in certain groups, and the causes of friction within the family. This is followed by a chapter on current theories of reform. Dr. Goodsell's book will prove serviceable for instruction purposes. In addition, it works out a well-balanced and comprehensive theory that gives practical guidance in one of the puzzling social problems of the day.

Literary sources have been little used as a basis for the study of the legal and political conditions of the past. Chilton Latham Powell in *English Domestic Relations: 1487–1653* (New York, Columbia University Press, 1917; xii, 274 pp.) has made an interesting and valuable study of the literature of marriage and domestic life during the period he has selected. His investigations have also extended to the more usual historical sources. He shows that the discrimination against women embodied in the English divorce law did not belong either to the early days when the Church controlled marriage, nor yet to the years between 1487 and 1653. It was between the years 1660 and 1857, when marriages were dissolved by act of Parliament, that the custom grew up of granting to the husband divorce on the ground of adultery alone—a right denied to the wife, who had to prove cruelty or desertion in addition to adultery. Between 1715 and 1850 250 acts dissolving marriage had been passed, 246 at the petition of the husband and four at the petition of the wife. Dr. Powell shows the degradation of women resulting from the ecclesiastic attitude toward the female sex, and the continual attempt to enforce obedience and subservience on the wife as her proper conduct. It is possible that he makes too much of the jokes that were current to the discredit of women. Nevertheless the book is extremely illuminating, and it indicates the possibility of using literary sources in a way hitherto little employed.

Mr. B. G. Bannington's *English Public Health Administration* (London, P. S. King and Son, Limited, 1915; xiv, 338 pp.) indicates on nearly ever page that it is written from the inside. It is much more than a history of the health code and a description of the elaborate machinery of the health committees and of the duties of their permanent staffs. It shows all this machinery at work; it shows where it runs smoothly, where it creaks and why it creaks. It is one of the most serviceable additions of the last ten years to the literature of English municipal institutions—a book of peculiar value to the student of English municipal life, practical, candid and illuminating. It reveals the great extent to which women of good education are making careers in the numerous and comprehensive activities of public-health commit-

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tees. For much of the newer work imposed on health committees by Parliament, women are eminently suitable, and for part of it their service is imperative. Women are now making good the judgment of such municipal councils as those of Nottingham and Islington, which, realizing that the city is merely the larger home, were the first to draft women into the public-health department of municipal work.

The veteran Australian free-trader, Mr. Edward Pulsford, has gathered together in *Commerce and the Empire* (London, P. S. King and Sons, Limited, 1917; x, 248 pp.) a considerable number of more or less unrelated writings on the tariff question. The first part of the book, entitled "1914 and After," contains notes on British capital outside Britain, tariff relations between Great Britian and the dominions, and other papers designed to show the unwisdom of the protective policy. Part ii, entitled "The Preferential Delusion," contains a statement of the various preferential arrangements between the different parts of the empire, and an argument against the permanent maintenance of any system of protection or preference. Mr. Pulsford is firmly of the opinion that under the new conditions brought about by the war, the maintenance of the British Empire will be impossible on any other basis than that of free trade.

Six lectures delivered before large and eager audiences at King's College, London, are comprised in *The Empire and the Future* (New York, The Macmillan Company, 1916; xv, 110 pp.). Mr. Steel-Maitland, under-secretary for the colonies, contributes an informing introduction presenting the response of the dominions to Great Britain's call for men in the war and the restraint shown by the dominions in the matter of open criticism. But after recalling Gallipoli, he points out the impossibility of tolerating a repetition of the present system of administration. He insists also that the world will judge the value of the British Empire just as much from the way in which it deals with the colored races as from its success in uniting the scattered democracies of European descent. Mr. H. A. L. Fisher, now minister of education, discusses imperial administration, recalling the fact that the Empire does not possess an administrative system and showing that such a system can come into existence only as the result of the prior creation of an imperial legislature. His statements regarding the American civil service disclose an astounding lack of knowledge concerning the far-reaching changes that have been accomplished since the establishment of the Federal Civil Service Commission. Mr. A. L. Smith in discussing the People and the Duties of Empire, gives the impression that the dominions in their development tend toward gov-

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ernment by labor. This is true of New Zealand and Australia, but not of South Africa, and certainly not of Canada. Mr. Smith, with apparent reason, attributes popular apathy in England toward the oversea dominions to the unfavorable association in the popular mind of the term empire "with the shoddy empire of Napoleon III, reactionary Russia, militarist Germany, and our own Jingoes." The symposium is mostly concerned with the new attitude of the people of Great Britain toward the oversea dominions.

In *British Colonial Policy, 1783–1915* (London, Oxford University Press, 1916; 266 pp.), Mr. C. H. Currey of the Teachers' College of Sydney, has written an informing and readable summary of constitutional development within the British Empire since the close of the American Revolution. It is concerned almost exclusively with the self-governing colonies and their relations with the United Kingdom. Scarcely anything is said of India or the crown colonies. The book is divided into three parts, according to phases of colonial policy, rather than to chronology. These parts deal respectively with the policies of centralization, devolution and co-operation. Mr. Currey is an Australian and belongs to the school of "colonial nationalism," which had its origin in the dominions. Imperial federation he regards as impracticable, and contrary to the interests and aspirations of the dominions. His ideal for the future of the Empire is a voluntary alliance or partnership between its self-governing parts.

Fifty-two papers are included in *Canada's Future* (New York, The Macmillan Company, 1916; xv, 320 pp.), a symposium of official opinion of what Canada offers after the war, edited by E. A. Victor. While there is little political discussion, most of the other aspects of Canadian life, agrarian, industrial, commercial, religious and social, are taken up. It is remarkable in a symposium carefully planned and well-edited, that there is no paper on the municipal institutions of Canada, and none on women in Canadian life. In the paper written by F. P. Gutelius, general manager of railways owned by the Dominion government, it is maintained that from the transportation standpoint, Canada's immediate future has already been provided for; while George E. Foster, minister of trade and commerce in the Borden government, and long the foremost authority on trade and finance in the Dominion House of Commons, frankly admits that in the years before the war there was over-speculation. Newton W. Rowell, leader of the Liberal opposition in the Ontario legislature, one of the few contributors who ventures into the realm of politics, describes Canada as the most individualistic community under the British flag. He realizes

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that Canada, in many respects, has not kept pace with political and social progress in Great Britain, but rejoices in the fact that even in Canada, individualism is receding a little. "The social conscience is asserting itself, and legislation to secure social justice for the masses of people will occupy a large place in the legislative program of the future."

There are sixty-three chapters in Mr. Francis P. Jones' *History of the Sinn Fein Movement and the Irish Rebellion of 1916* (New York, P. J. Kenedy and Sons, 1917; xxvi, 447 pp.). It begins with the first national council of the Sinn Feiners, held in Dublin in May 1905, and ends with the execution of Casement at Pentonville on August 3, 1916. The book appeals vehemently to men in this country who have a vested interest in Irish grievances, and who find it to their advantage to ignore the fact that since 1870 a new Ireland, not the Ireland of Irish-American historians of Ireland, has come into existence. According to Mr. Jones, if the rebellion of Easter week 1916 had succeeded, it would have proved a crowning disaster to England in the war. Ireland would have been able to hold out until the conclusion of peace, and would have had no occasion to ask at the peace conference for an independence which her arms had already won.

With the publication of the present volume on *Church and Reform in Scotland* (Glasgow, James Maclehose and Sons, 1916; xii, 378 pp.), Dr. William Law Mathieson completes his history of Scotland from 1550 to 1843—the year of the disruption of the Presbyterian Church. It is the fourth volume of a large and ambitious work, of which the first volume was issued as long ago as 1892. As a general history the present volume is excellent; it is scholarly and at the same time highly readable, and it is much more detailed and comprehensive than is sometimes the case with general histories. Students of church history and of ecclesiastical controversies will find the volume ample for their needs, while for students of political science the fourth volume of Dr. Mathieson's work is the most important in the series. This is true for three reasons: First, the work shows that every reform in the constitution of Scotland, parliamentary, ecclesiastic, judicial or municipal, was opposed by the Tories on the ground that it infringed the compact at the Union of 1707. Second, the volume throws much light on conditions in Scotland when the poor law was administered through kirk sessions, and when municipal and ecclesiastical institutions were so interwoven that the clergy of the Presbyterian church drew their salaries from the municipal treasuries. Third, Dr. Mathieson's descriptions of Toryism in Scotland from the French Revolution to 1830, his analysis

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of the spirit and purpose of Toryism, and his examination of the use that high-placed Tories made of disreputable newspapers, helps students to realize why it was that from 1832 to the division in the Liberal party of 1886, two or three first-class compartments in a railway carriage afforded all the accommodation necessary for Tory or Conservative members of the House of Commons journeying from Edinburgh to Westminster. An unfortunate lack in Dr. Mathieson's pages is his failure to mention the Convention of Royal Burghs. Today that ancient institution is a great influence for good in Scotch municipal life.

It is nearly forty years since Dorman B. Eaton wrote his history of the civil service in Great Britain. In these years the service has been greatly enlarged and many of its conditions have changed. It is for this reason that a book such as Sir C. Rivers Wilson's *Chapters from My Official Life* (New York, Longmans, Green and Company, 1916; xv, 310 pp.) is especially welcome. The author's civil-service reminiscences cover his experiences at the treasury and at the national debt office—experiences that extended from 1856 to 1894. The book affords valuable glimpses of some of the work of the treasury, especially of the framing of budgets, as Wilson acted as private secretary to Lowe, Disraeli and Gladstone when these statesmen held the office of chancellor of the exchequer. It also carries the best published description from the inside of the organization and duties of the commissioners of the national debt. Wilson was president of the Grand Trunk Railway Company of Canada from 1895 to 1909. The chapter relating his experience here reads grotesquely when placed side by side with sections from the Acworth-Drayton-Smith report of April 1917, on railways and transportation in Canada. The report of this recent royal commission—one of the most important reports of a royal commission in Canada since that of the commission on inland waterways of 1871—makes it clear that Wilson, despite all his experience, was outmatched when he was negotiating with the politicians at Ottawa, who in 1903–4 were intent on securing the building of a second transcontinental railway. The Grand Trunk had a sound scheme for extending its line into the prairie provinces, but the politicians, to serve political ends, switched the Grand Trunk plan quite out of its orbit, to the misfortune of Canadian public finance, of the Grand Trunk Railway Company, and of the general transportation system of the Dominion. Had Wilson stood up courageously and resolutely to the Ottawa government in 1903–4, it is not probable that Canada in these days of war stress would be confronted with the worst railway crisis in its history.

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"As a distraction from the ever-present anxieties of the war," Lord George Hamilton has written his *Parliamentary Reminiscences and Reflections: 1868 to 1885* (New York, E. P. Dutton and Company, 1917; xii, 344 pp.). Hamilton frankly intimates in his preface that he writes as a Tory. His tone throughout, as would be expected in view of this fact, is partisan—partisan as regards the Established Church and its part in elementary education, and partisan as regards political questions. While the reminiscences are in no sense revealing, and while they throw no new light on the politics of 1868–1885, they are readable and distinctly interesting, for they are full of individuality and color. Hamilton's chapters describing his work at the India Office and at the Department of Education are informing, especially his detailed description of the organization of the India Office and the scope of its work.

Mr. E. S. Roscoe's brief and admirable monograph on *Lord Stowell* (Boston, Houghton Mifflin Company, 1916; x, 116 pp.) is one of the few books called out by the Great War that will long outlive that struggle. Lord Stowell was at Oxford from 1761 to 1785. He was of the House of Commons from 1790 to 1821. What little there is of interest in these parts of his life is embodied in Mr. Roscoe's pages, but Mr. Roscoe is concerned chiefly with Stowell's work in the court room as judge of the high court of admiralty at Doctors' Commons from 1798 to 1828. In a judgment delivered in 1799, Stowell defined his conception of the work that lay before him in the days of the Napoleonic wars, as an interpreter and molder of the law of prize. "I trust that it has not escaped my anxious recollection for a moment, what it is that the duty of my station calls from me. It is to consider myself as stationed here, not to deliver occasional and shifting opinions to serve present purposes of particular national interest, but to administer with indifference that justice which the law of nations holds out without distinction to independent states, some happening to be neutral and some to be belligerent." Mr. Roscoe shows how fully Stowell realized that ideal; how he demonstrated to the world that the British prize court was an impartial judicial tribunal with a well-defined procedure, and that its decisions were based on a reasoned body of jurisprudence. The framework of Mr. Roscoe's book is peculiarly good. There is a chronological table covering Stowell's life from his birth at Heworth, Durham, in 1745, to his death at Sonning, Berkshire, in 1836; a list of reports which contain Stowell's judgments; a list of his principal prize decisions from the Vigilante case in 1798 to the Felicity case in 1819; and an adequate index.

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Mrs. Edith Lyttelton's *Alfred Lyttelton: An Account of His Life* (New York, Longmans, Green and Company, 1917; xiv, 431 pp.) is an unconventional, human and surprisingly intimate account of a man who made for himself no conspicuous place in English political history, though he was secretary for the colonies in the Balfour administration of 1902–1905. For readers interested in the English governing class and its social life, in the English bar and its circuit life, or in Parliament, the value of the book lies in its intimate depiction of the education, the political activities and the ambitions of men of the governing classes, of the keen, intelligent and continuous political interest of the women of this class, in the many glimpses of Gladstone, who was Alfred Lyttelton's uncle, and in the brief account that Mrs. Lyttelton gives of her husband's short tenure in the Colonial Office. Mrs. Lyttelton's defense of the Chinese labor ordinance of February 1904 for the Rand can scarcely be accepted. "The gold mines, on the prosperity of which the whole expansion of the country depended," she writes, "were crippled for want of labor. Every kind of expedient had been tried." As a matter of fact every expedient but a fair wage probably had been tried. The importation of Chinese labor into South Africa was not an expedient that was forced on the mine owners by conditions at the end of the war. It was urged on the British government long before the end of the war. History will, in fact, record that as regards both the Chinese labor ordinance and the much-advertised loan from Johannesburg, the Balfour government and especially its colonial secretary were deceived by the cosmopolitan gentlemen of the Rand.

For popular audiences in American cities Dr. W. Cunningham's lectures on *English Influence in the United States* (New York, G. P. Putnam's Sons, 1916; xii, 168 pp.) must have been stimulating and informing. They are concerned with such subjects as Agriculture, the Township and Local Offices, Town Planning, Public Buildings, College Courses at British Universities, and Social Conditions in England. They were intended to show the close connection between English and American life, and to this end Dr. Cunningham drew on his marvelously large fund of knowledge of English conditions. In book form the essays read well, but detailed and really comparative treatment of any one subject is not to be expected in a small volume covering so many aspects of life. There is need for a book giving full and detailed treatment to the influence of England on the United States, and there is a no less obvious need of a book on the influence of the United States on England. American students are much better equipped than English for tracing the influence of England on the United States,

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because they work systematically and with some intensity in the history of both countries, while in England little systematic or sustained attention is given to the later history of the United States. Only students who know American political, religious, social and industrial history can ever succeed in tracing in detailed and scholarly fashion the immense influence which, especially since the Civil War, the United States has had on the politics, agriculture and industry of Great Britain, and also on the relations of the oversea dominions to the mother country.

Cicero, A Sketch of his Life and Works (Chicago, A. C. McClurg and Company, 1916; xlv, 615 pp.), by Hannis Taylor, is in part an enthusiastic appreciation of Cicero's character and genius, of his education, public career and literary work. Everywhere the text is interspersed with appropriate quotations in English from Cicero's writings, and pages 457–603 present a Ciceronian anthology of Latin texts with translations, prepared by the author in collaboration with Mary Lillie Taylor Hunt. Those who have time to touch but lightly on ancient culture will find these quotations illuminating. The selection and translation must have required labor, which seems to have been commendably done. If Dr. Taylor had restricted himself to this general appreciation combined with the anthology, his work would have been far briefer, but more meritorious, than is actually the case. Even this judgment, however, requires qualification. It is true, as the author says, that such an interpretation of character as Mommsen has applied to Cicero, in which the malignant sneer has usurped the place of impartial judgment based on evidence, is a thing of the past, and polemics against it are therefore superfluous. Next to Mommsen's scoffing, however, the worst gift a biographer can bestow on his hero is too fulsome eulogy, which is sure to call forth protests. For this reason a better tribute is to be found in the sober judgment of E. G. Sihler, *Cicero of Arpinum*, in comparison with whom Dr. Taylor is but an amateur. Other parts of his work need not detain us long. His sketch of Roman constitutional history is an inconsistent patchwork of views that are mostly antiquated, and his treatment of law is full of inaccuracies. The illustrations, though attractive, have been chosen and described with insufficient knowledge of their subjects. In brief, the general impression conveyed by the volume is that the author, with gifts of imagination and literary taste, is by intellectual disposition wanting in the thoroughness, accuracy and logic essential to the scholar who would contribute something to existing knowledge.

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J. W. Jeudwine in *The Manufacture of Historical Material* (London, Williams and Norgate, 1916; xxvii, 268 pp.), addresses himself to two classes of readers. These are (1) persons engaged in historical study, whether as teachers or pupils; and (2) the large class of professional and business men who seldom have any opportunity of reviewing or correcting their early impressions of history, though they themselves may be helping to make history on the strength of various fictions taught to them at school. It is a British audience that Mr. Jeudwine addresses; and it is early British and Irish traditions and records that he subjects to the tests of his criticism. But the general lines of his argument and the criteria he suggests for judging of the truth of historical legends are universal, and the application of such criteria is as necessary in regard to American history as in regard to English or Irish history; although the sources of historical legends in the United States are wrapped in less ancient obscurity. Some of Mr. Jeudwine's warnings are familiar. The monastic chroniclers have long been under suspicion as regards accuracy, both of statement and of transcription. But Mr. Jeudwine goes far behind the monastic chronicles. He shows that much of what we regard as history, as well as the whole basis of common law, was long carried in the memories of men and communicated from generation to generation by word of mouth. This oral tradition lasted longer in Ireland than in England. In Ireland there grew up an order of poet-lawyer-historians—an order that came into rough contact with the English authorities when the latter began their ill-fated attempt to substitute English for Irish law, and to impose an unpopular land system on a conquered people. In both countries, however, the written word was gradually substituted for oral tradition, and Mr. Jeudwine points out the many pitfalls that lie in the path of the historian even after documentary sources come into existence. He warns against reading into the past modern modes of thought and the atmosphere of modern institutions. He points out the failures of even the best of English historians to take all the factors of development into account, and he winds up with an appeal for an impartial elementary history of Great Britain for the use of the "illiterate professional class and others."

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